

Calendar 144

105TH CONGRESS }
1st Session

SENATE

{ REPORT
105-61

OCEAN SHIPPING REFORM ACT

R E P O R T

OF THE

**COMMITTEE ON COMMERCE, SCIENCE, AND
TRANSPORTATION**

ON

S. 414



JULY 31, 1997.—Ordered to be printed

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED FIFTH CONGRESS

FIRST SESSION

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OCEAN SHIPPING REFORM ACT

JULY 31, 1997.—Ordered to be printed

Mr. MCCAIN, from the Committee on Commerce, Science, and
Transportation, submitted the following

REPORT

[To accompany S. 414]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 414) “A Bill to amend the Shipping Act of 1984 to encourage competition in international shipping and growth of United States imports and exports, and for other purposes”, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill (as amended) do pass.

PURPOSE OF THE BILL

S. 414, the Ocean Shipping Reform Bill of 1997, would amend the Shipping Act of 1984 (46 U.S.C. App. 1701 et seq.), and other related U.S. shipping laws to encourage competition in international shipping, growth in United States exports, and the increased use of United States ports for international trade, and for other purposes.

BACKGROUND AND NEEDS

Ocean liner shipping is an international industry involving trade between sovereign nations, and the industry is subject to multinational regulation. The international nature of the industry has been characterized by chronic conditions of carrier overcapacity. The primary cause of liner shipping overcapacity is the presence of international policies designed to promote national-flag carriers and also to ensure strong shipbuilding capacity in the interests of national security and employment. These policies include subsidies to purchase ships and operate ships, tax advantages to lower costs, cargo reservation schemes, and national control of shipyards and

shipping companies and have resulted in an industry which is not completely driven by economic objectives.

Expansion of the liner shipping industry has increased every year since the utilization of containerization in the late 1960's, and in the 1990's, container port handling has risen at nearly 10% per annum. According to a Drewry shipping report on Global Container Markets—Prospect and Profitability in a High Growth Era (1996): “Global ocean and intermodal container freight revenue is around \$80–90 billion per annum, and while this is rising annually with the expansion of world container trade, unit revenues are, and have been consistently falling. For instance, in the transpacific trade, average unit revenues were 60% less in real terms in 1994 than in 1976. The transatlantic market presents a broadly similar picture, and average westbound earnings in 1994 (post-Trans-Atlantic Agreement and Trans-Atlantic Conference Agreement rate restoration) were just 46% of 1978's level in real terms, having reached as low as 35% at the bottom of the market in 1992.” The primary causes for reductions in unit revenues per box, in real terms, continue to be overcapacity and gains in productivity inherent in intermodal containerization.

Historically, ocean shipping liner companies attempted to combat the ocean shipping overcapacity that had developed into “rate wars” by establishing shipping conferences to coordinate their practices and pricing policies. The first shipping conference was established in 1875, but it was not until 1916 that the Federal government reviewed the conference system. The Alexander Committee (named after the then-Chairman of the House Committee on Merchant Marine and Fisheries) recommended continuing the conference system in order to avoid ruinous “rate wars” and trade instability, but also determined that conference practices should be regulated to ensure that they did not adversely impact shippers. All other maritime nations allow shipping conferences to exist with immunity from the application of antitrust or competition laws.

U.S. regulation of the international ocean shipping industry began with the Shipping Act, 1916 (1916 Act). The 1916 Act provided conferences with immunity from U.S. antitrust laws, imposed certain requirements on conferences (such as free entry and exit of their members, or more commonly known as open conference requirements), and prohibited discriminatory rates or services. The 1916 Act also created a separate government agency, the United States Shipping Board, to enforce the 1916 Act.

In 1961, Congress amended the 1916 Act to address certain concerns about anticompetitive conduct by ocean carrier conferences. The 1961 Amendments mandated tariff filing, introduced a limited form of independent action, and established an independent agency, the Federal Maritime Commission (FMC), to regulate ocean shipping practices. Prior to the creation of the FMC, ocean shipping regulation was performed by the Federal Maritime Board as part of the Department of Commerce. The 1961 Amendments authorized the FMC to apply a public interest standard to the agency's review of ocean carrier agreements, strengthened the FMC's powers to investigate and punish ocean carrier transgressions, and authorized it to disapprove rates that were determined to be detrimental to the commerce of the United States.

After enactment of the 1961 Amendments, ocean carriers complained about delays in the FMC agreement approval process. The 1961 Amendments strengthened the agreement review process to incorporate public interest standards, and the injection of antitrust considerations after the Supreme Court decision in *Federal Maritime Commission v. Aktiebolaget Svenska America Linien*, 390 U.S. 238 (1968), severely delayed consideration and approval of carrier agreements.

The advances in ocean shipping productivity were dramatic in the 1960's and 1970's, but the general worldwide recession in the early 1970's tightened the need for shipping services. Foreign carriers crowded into the U.S. trades where the U.S. policy requiring conferences to be open guaranteed that they would be entitled to conference cargoes. Uncertainty as to the legality of ocean shipping agreements that contained land-side intermodal agreements, widespread illegal practices brought about by competitive pressures, and delays in approval for agreements that increased productivity by allowing and facilitating intermodal containerization, led to the call for reform of the 1916 Act.

Congress considered ocean shipping regulation throughout the 97th and 98th Congress, culminating in the enactment of the Shipping Act of 1984 (1984 Act). The 1984 Act overhauled the ocean carrier agreement review process, allowed greater flexibility in the type of discount-rate and contracts that could be offered by ocean carriers, recognized the increasing role of non-vessel-operating common carriers (NVOCCs) and shippers' associations in facilitating intermodal ocean transportation, and expanded the right of independent action to conference tariffs. While the 1984 Act allowed greater discrimination for service contracts than tariffs, it essentially preserved common carriage requirements for both types of transactions, and similarly situated shippers were afforded identical contract rights.

The 1984 Act also established an Advisory Commission on Conferences in Ocean Shipping (the Advisory Commission), effective five and one-half years after the date of enactment, to study the ocean shipping regulatory system and recommend changes to that system. The Advisory Commission report, submitted in April 1992, produced no consensus within either the Advisory Commission or the industry on recommended changes to the 1984 Act. The Advisory Commission report, however, identified several concerns of individual industry segments with certain aspects of the regulatory system:

Ocean carrier conferences: Many shippers expressed concern that conferences were able to wield excessive power to prevent competition under the 1984 Act. This concern was based on the FMC's limited ability to challenge anticompetitive ocean carrier agreements under section 6(g) of the 1984 Act, the increasing market share of conferences in most trade lanes, the use of trade stabilization agreements between conferences and non-conference ocean carriers, conference use of public tariff and service contract information and the independent action 10-day waiting period to restrict competition among conference carriers, and the absence of a mandatory right of independent action by conference carriers for service contracts. Ocean carriers contended that an unrestricted market would

result in a highly destructive market, and rapidly devolve into a market oligopoly.

Publication of tariff and service contract rates and terms: Many shippers, especially large volume shippers, expressed concern that the transparency of the U.S. system disadvantages U.S. shippers with respect to their foreign competitors in third markets. In general, foreign nations have not required transparency of rates or services, and their shippers' rates are not publicly accessible. Larger shippers also objected to the requirement that similarly situated shippers be allowed to access identical service contract rights, contending that it reduced their ability to negotiate competitive advantages, while smaller shippers contended that this right helped to counter competitive advantages. Many shippers also objected to conference provisions that restricted their rights to negotiate directly with individual conference carriers.

Shippers' associations, NVOCCs, and freight forwarders: Many shippers' associations and NVOCCs expressed concerns that conferences were not negotiating with them in good faith. Many freight forwarders wanted to increase the mandatory floor for freight forwarder compensation, which is only applicable to freight forwarders that are also customs brokers, to include those forwarders who do not also perform customs brokerage. These entities generally supported the 1984 Act's transparency and common carriage requirements, although some NVOCCs generally wanted relief from tariff filing requirements. Many NVOCCs also wanted the right to enter into service contracts with shippers as carriers to help them compete with ocean carriers. Smaller shippers also expressed concerns that reductions in contract transparency could facilitate carrier abuse of collective business authority, and would also ensure the benefit of larger shippers at the expense of smaller shippers.

Subsequent to the Advisory Commission report, Committee hearings and discussions with industry representatives have produced similar views as expressed in the report. One significant exception is the recent support of U.S. ocean carriers for relief from common carriage principles with respect to service contracts, including confidentiality of service contract terms. Since the Advisory Commission report, ocean carrier relationships have become increasingly diversified. As the need for intermodal shipping services becomes increasingly global, ocean carriers increasingly rely on complex partnerships with other ocean carriers to coordinate assets and services to meet this global requirement. These ocean carrier partnerships involve smaller carrier groups and more comprehensive coordination of intermodal and ocean shipping assets than typical conference activities, which are focused more on rate stability. Many U.S. ocean carriers participate in collective shipping arrangements and believe that these arrangements would produce maximum efficiency if carriers were allowed to engage in joint contracts for service. Shipper needs for global shipping alternatives will continue, and carrier flexibility to engage in tailored carrier-shipper contracts will increase.

While developing the reported bill, the Committee conducted two hearings and more than 100 meetings with affected industry and Federal agency representatives, spent in excess of 300 hours in dis-

cussion with these representatives, and developed a comprehensive understanding of the concerns of all of these affected parties. Attempts to balance the interests of all affected parties were difficult given the competing interests. Additionally, the Committee bill attempted to balance the need to deregulate the industry with the need to provide oversight of industry practices, given the immunity from the antitrust laws. The reported bill attempts to compromise the positions and interests of those who support complete deregulation of ocean shipping and those who support the status quo.

LEGISLATIVE HISTORY

On February 2, 1995, the House of Representatives Committee on Transportation and Infrastructure Subcommittee on Coast Guard and Maritime Transportation held a hearing on international ocean shipping. On August 1, 1995, Congressman Shuster, Chairman of the House Transportation and Infrastructure Committee introduced H.R. 2149, the Ocean Shipping Reform Act of 1995, with Congressmen Mineta, Coble, Traficant, and Oberstar as cosponsors. On August 2, 1995, the House Transportation and Infrastructure Committee ordered H.R. 2149 reported by voice vote.

On October 23, 1995, Senator Pressler, Chairman of this Committee, introduced S. 1356, the Ocean Shipping Reform Act of 1995, which was a companion bill to H.R. 2149, as reported. On November 1, 1995, the Committee held a hearing on S. 1356. Because of concerns about lack of oversight of carrier practices immune from the antitrust laws, the Committee worked to develop a compromise that would ensure a higher degree of review of carrier-shipper practices. Senator Pressler published amendments to S. 1356 in the Congressional Record on July 18, 1996 and September 30, 1996 for public comment. The Senate Commerce Committee took no further action on ocean shipping regulation in the 104th Congress.

On March 10, 1997, Senator Hutchison, Chairman of the Committee's Subcommittee on Surface Transportation and Merchant Marine, introduced S. 414. The bill was cosponsored by Senators Lott, Breaux, and Gorton. This bill included minor changes to the amendment to S. 1356 published on September 30, 1996. The Subcommittee held a hearing on S. 414 on March 20, 1997 (see Senate document S. Hrg. 105-57 for a record of the hearing). On May 1, 1997, the Committee considered and adopted an amendment in the nature of a substitute for S. 414 offered by Senator Hutchison, cosponsored by Senators Lott, Breaux, and Gorton. The Committee also adopted an amendment offered by Senator McCain that would prohibit ocean carriers that had violated certain U.S. shipping laws within the previous five years from receiving a shipbuilding loan guarantee under title XI of the Merchant Marine Act, 1936. The amended bill was ordered reported by the Committee.

SUMMARY OF MAJOR PROVISIONS

As reported, S. 414 would, for ocean liner shipping through U.S. ports:

1. Provide shippers and common carriers greater choice and flexibility in entering into contractual relationships with shippers for ocean transportation and intermodal services. The

most significant improvement is the right of members of ocean carrier agreements to negotiate and enter into service contracts with one or more shippers independent of the agreement.

2. Reduce the expense of the tariff filing system and privatize the function of publishing tariff information while maintaining current tariff enforcement and common carriage principles with regard to tariff shipments.

3. Protect U.S. exporters from disclosure to their foreign competitors of their contractual relationships with common carriers and proprietary business information, including targeted markets.

4. Specifically exempt new assembled motor vehicles from tariff and service contract requirements and provide the FMC with greater flexibility to grant general exemptions from provisions of the 1984 Act.

5. Reform the licensing and bonding requirements for ocean freight forwarders and NVOCCs and consolidate the definitions of those two entities under the term "ocean transportation intermediary."

6. Strengthen the provisions of the 1984 Act, the Foreign Shipping Practices Act of 1988, and section 19 of the Merchant Marine Act, 1920, that prohibit unfair foreign shipping practices to provide greater protection from certain discriminatory actions.

7. Provide for an orderly transition to this more deregulated ocean shipping environment.

8. Transfer the functions of the FMC to the Surface Transportation Board (STB), rename the STB as the Intermodal Transportation Board (ITB), and make appropriate changes in the qualifications of ITB members.

ESTIMATED COSTS

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate prepared by the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, June 13, 1997.

Hon. JOHN MCCAIN,
*Chairman, Committee on Commerce, Science, and Transportation,
U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 414, the Ocean Shipping Reform Act of 1997.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Deborah Reis (for the federal costs); Karen McVey (for the state and local impact); and Lesley Frymier (for the private-sector impact).

Sincerely,

PAUL VAN DE WATER
For June E. O'Neill, (Director).

Enclosure.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

S. 414—Ocean Shipping Reform Act of 1997

Summary: S. 414 would amend the Shipping Act of 1984 and other laws that govern the regulation of ocean shipping by the Federal Maritime Commission (FMC). The bill would authorize the appropriation of \$15 million for the FMC for fiscal year 1998 while also providing for the subsequent termination of the agency and transfer of its responsibilities to the Surface Transportation Board (STB). Finally, the bill would extend eligibility for certain veterans' death benefits to cover merchant mariners who served between August 16, 1945, and December 31, 1946.

Assuming appropriation of the authorized amount, CBO estimates that the FMC would spend \$15 million in 1998 to carry out routine duties as well as one-time activities to implement this legislation. Enacting the bill also would increase direct spending by between \$0.2 million and \$0.4 million annually. Finally, enacting S. 414 would increase federal revenues by about \$1 million in 1998 and decrease revenues by roughly the same amount in each of the following years. Because the bill would affect direct spending and receipts (revenues), pay-as-you-go procedures apply.

S. 414 contains several provisions that would either eliminate existing requirements on the private sector or impose new private-sector mandates as defined in the Unfunded Mandates Reform Act of 1995 (UMRA). S. 414 contains no intergovernmental mandates as defined in UMRA and would have no significant impact on state, local, or tribal governments.

Estimated cost to the Federal Government: CBO estimates that enacting S. 414 would increase discretionary spending in 1998 by \$1 million over the current year's funding level, assuming appropriation of the authorized amount. In addition, the bill would affect both revenues and direct spending each year. These budgetary effects are summarized in the following table.

(By fiscal years, in millions of dollars)

	1997	1998	1999	2000	2001	2002
SPENDING SUBJECT TO APPROPRIATION						
FMC Spending Under Current Law:						
Budget Authority ¹	14	0	0	0	0	0
Estimated Outlays	14	1	0	0	0	0
Proposed Changes:						
Authorization Level	0	15	0	0	0	0
Estimated Outlays	0	14	1	0	0	0
FMC Spending Under S. 414:						
Authorization Level ¹	14	15	0	0	0	0
Estimated Outlays	14	15	1	0	0	0
CHANGES IN DIRECT SPENDING AND REVENUES						
Direct Spending:						
Estimated Budget Authority	0	(2)	(2)	(2)	(2)	(2)
Estimated Outlays	0	(2)	(2)	(2)	(2)	(2)
Revenues:						
Estimated Revenues	0	1	-1	-1	-1	-1

¹ The 1997 level is the amount appropriated for that year.

² Less than \$500,000.

The costs of this legislation fall within budget function 400 (transportation).

Basis of estimate: For purposes of this estimate, CBO assumes that S. 414 will be enacted by the end of fiscal year 1997 and that all provisions will become effective at that time or as stated in the bill. We also assume that the entire amount authorized will be appropriated by the beginning of fiscal year 1998. Outlays for discretionary activities are estimated on the basis of historical spending patterns for the FMC. Estimates of discretionary costs, changes in federal revenues, and direct spending effects are based on information provided by the FMC, the U.S. Coast Guard, and the Office of Management and Budget.

Spending subject to appropriation

S. 414 would authorize the appropriation of \$15 million for the FMC for fiscal year 1998. Assuming appropriation of the entire amount authorized, CBO estimates that the FMC would spend most of the increase on one-time activities to implement Titles I and II of the bill.

Title I would make significant changes in how the FMC regulates ocean shipping, particularly common carrier rates, and terms and conditions for services provided under tariff and/or contract. This title would amend the 1984 act to eliminate the existing requirement that ocean common carriers and conferences file their tariffs with the FMC. Common carriers and conferences (associations of carriers) would still have to make tariffs available electronically to the public for reasonable fees (or to federal agencies at no charge), but the tariffs would not require FMC approval before they become effective. Common carriers (of any type or combination) would still have to file all service contracts with the FMC and publish an abstract of the contract's essential terms, but they would no longer have to disclose rate information publicly. The FMC would still have to acquire and review published tariffs and suspend or prohibit the use of those found to violate federal shipping laws.

Title I would repeal 46 app. United States Code 1707a, which requires the FMC to collect and disseminate to the public all tariffs and other information through an automated tariff filing and information system (ATFI). The FMC would still be charged with ensuring the accessibility and accuracy of all private automated systems used to provide tariff information to the public. Other provisions of Title I would strengthen regulations on controlled carriers (which are common carriers owned or otherwise controlled by foreign governments) and would change licensing and financial security requirements imposed on non-vessel-operating common carriers (NVOCCs) to be more consistent with those on ocean freight forwarders (OFFs).

Title II of the bill would terminate the FMC and transfer all of the agency's functions and responsibilities to the STB, which would be renamed the Intermodal Transportation Board (ITB). These provisions of Title II would be effective on January 1, 1999.

Of the \$15 million authorized, we estimate that the FMC would incur one-time costs of about \$1 million in 1998 to implement the changes made by Titles I and II. The agency would use some of this money for rulemaking proceedings. For example, the agency would

have to promulgate regulations to implement the tariff filing changes made by section 106, including new guidelines on electronic tariff systems. Also, the termination of ATFI could result in costs of up to \$0.2 million to relocate computer equipment owned by the FMC but located on a contractor's premises. Finally, the balance would be spent on activities associated with the agency's termination and the transfer of regulatory responsibilities to the ITB. One-time spending for these purposes would include minor rule-making costs and severance payments to former employees. We expect that any reduction in personnel levels would be small, and that severance costs would therefore be minimal.

After the two regulatory bodies have merged, ongoing costs to carry out the new board's responsibilities would be about the same as those incurred by the FMC and the STB under current law. In addition to reviewing tariffs for potential violations of the law, the government would continue to undertake its other regulatory responsibilities, such as investigating complaints against carriers and others, overseeing conference agreements and activities, and taking actions against those who engage in prohibited acts.

Direct spending

Under Title IV, merchant mariners who served between August 16, 1945, and December 31, 1946, would be eligible for veterans' burial and funeral benefits. CBO estimates that these provisions would increase direct spending by \$0.2 million in fiscal year 1998 and by gradually increasing amounts in subsequent years, up to \$0.4 million annually by 2001.

CBO estimates that, to carry out Title IV, the Coast Guard would incur administrative costs of about \$1.5 million in 1998 and \$1 million in the following year. The increased spending in both years would be offset by fee collections provided for in the bill. Also beginning in 1998, the federal government would pay about \$0.2 million in additional death benefits (including flags, headstones, burial allowances) to eligible seamen. This amount would grow to about \$0.4 million annually by 2001.

Revenues

Several provisions of S. 414 would affect federal revenues. The most significant of these are sections 106 and 107, which would free carriers and conferences from having to file tariffs with the FMC and would terminate the agency's responsibility to make tariff information available electronically. As a result of these provisions, the Treasury would lose nearly all of the \$0.8 million it collects annually from tariff filing fees, remote access charges, and sales of ATFI tapes. Such losses would be partially offset by increased collections of license application fees resulting from section 117, which would require NVOCCs to obtain licenses as ocean transportation intermediaries. We estimate that such revenues would be about \$1.4 million in 1998 for initial applications and about \$0.2 million annually thereafter for new applications and license amendments. Finally, the penalty provisions in section 113 also could result in additional revenues, but these are likely to be minimal. As shown in the preceding table, the net effect of all

changes in federal revenues would be an increase of about \$1 million in 1998 and a loss of a similar amount each year thereafter.

Pay-as-you-go considerations: Section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 sets up pay-as-you-go procedures for legislation affecting direct spending or receipts through 1998. CBO estimates that S. 414 would have no significant effect on direct spending in fiscal year 1998 and would increase receipts in 1998 by about \$1 million.

Estimated impact on State, local, and tribal governments: S. 414 contains no intergovernmental mandates as defined in UMRA. Title I of the bill would relieve operators of marine terminals, some of which are state or local governmental entities, of two administrative requirements and provide them new legal protection in certain rate-setting actions. Based on information from operators of public marine terminals and ports, CBO estimates that any savings resulting from these provisions would be negligible.

Enactment of Title IV of the bill could result in additional costs for some state, local, and tribal governments to the extent that their retirement systems provide credit for military service. (For the purposes of certain state retirement benefits, this title would result in an extra sixteen months of service credit for merchant mariners because some states credit such service towards their governmental retirement systems.) Based on information from state retirement officials and the National Association of State Retirement Executives, CBO estimates such costs would not be significant.

Estimated impact on the private sector: S. 414 would eliminate existing mandates on common carriers, conferences, and marine terminal operators and impose new mandates on common carriers and conferences. Based on information provided by government and industry sources, CBO estimates that the net direct costs of these new mandates would not exceed the statutory threshold established in UMRA (\$100 million in 1996, adjusted annually for inflation) in any year.

Section 104 would require conferences to prohibit agreements that require members to disclose terms of service contracts or that restrict member negotiations for service contracts. CBO believes that these requirements would weaken conferences' control over service contracts. The magnitude of the costs to conferences is unclear; however, any costs associated with these requirements would most likely be offset by benefits to shippers.

Section 106 would eliminate the existing mandate that common carriers and conferences file tariffs with the Federal Maritime Commission and replace it with a requirement that they make tariffs publicly available, according to regulations that would be issued by the FMC. Based on information provided by government and industry sources, CBO estimates that the costs of the new mandate, in aggregate, would most likely be less than or equal to the costs of the existing mandate.

Section 117 would replace the license requirement for ocean freight forwarders (OFFs) with a license requirement for ocean transportation intermediaries (OTIs), a new category that would include OFFs and non-vessel operating common carriers. Based on information provided by government sources, CBO believes that the

2000 OFFs that are already licensed (including 300 NVOCCs) would not need to be re-licensed. However, approximately 2000 NVOCCs would have to be licensed. Assuming license fees remain at the current level, the total cost to NVOCCs would be \$1.4 million in fiscal year 1998. CBO also estimates a cost to NVOCCs of about \$200,000 per year in fiscal years 1999–2002 in fees for new licenses and amendments to existing licenses.

To satisfy license requirements, NVOCCs also would be required to be bonded at an amount determined by the FMC. Currently, OFFs are bonded at \$30,000, with an additional \$10,000 requirement for every branch office. NVOCCs are bonded at \$50,000. The NVOCC bond requirement would be repealed under S. 414. CBO has no basis for predicting the amount of the bonding requirement that would be established for OTIs. Depending on FMC regulations, bonding requirements could result in savings or impose greater costs on OFFs and NVOCCs.

Other sections of the bill would eliminate current mandates for common carriers, conferences, and operators of marine terminals.

Estimate prepared by: Federal Costs: Deborah Reis. Impact on State, Local, and Tribal Governments: Karen McVey. Impact on the Private Sector: Lesley Frymier.

Estimate approved by: Robert A. Sunshine, Deputy Assistant Director for Budget Analysis.

REGULATORY IMPACT STATEMENT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported.

NUMBER OF PERSONS COVERED

This legislation does not significantly change the scope of entities or actions subject to the 1984 Act. The specific exclusion from tariff and service contract requirements of new assembled automobiles should result in a minor reduction in the number of persons subject to these regulations. The enhancement of the FMC's general exemption authority may result in further reductions in the area.

ECONOMIC IMPACT

The amendments to the 1984 Act are intended to increase competition in ocean shipping, which is not expected to have an inflationary impact on the Nation's economy.

Title II of the bill authorizes appropriations of \$15 million for the FMC for fiscal year 1998. This funding level is not expected to have an inflationary impact on the Nation's economy. This title also transfers the functions of the FMC to the STB, which would be re-named the ITB. This consolidation is likely to result in minor cost savings to the Federal Government.

PRIVACY

This legislation will not have any adverse impact on the personal privacy of the individuals affected.

PAPERWORK

This legislation eliminates the filing of ocean shipping tariffs with the FMC and encourages the use of privately owned, publicly accessible, automated systems for the publication of a reduced volume of information. This legislation creates a new requirement to license NVOCCs in the United States. This legislation should result in no net increase in paperwork requirements.

SECTION-BY-SECTION ANALYSIS

Section 1.—Short title

This section cites the short title of the bill as the “Ocean Shipping Reform Act of 1997”.

Section 2.—Effective date

This section provides that the amendments made by S. 414 take effect on March 1, 1998, unless otherwise expressly provided in S. 414.

TITLE I—AMENDMENTS TO THE SHIPPING ACT OF 1984

This title of the bill contains a number of amendments to the 1984 Act. Among the provisions considered for amendment was section 6(g). Although the reported bill does not change its provisions, a discussion of the Committee’s evaluation of section 6(g) is warranted.

Although the bill retains the broad statutory language of section 6(g) of the 1984 Act, the Committee believes that the agency’s interpretation and administration of the general standard must be revised to meet the dramatic changes that have taken place in the ocean liner shipping industry over the last decade. In response to those changes, and in keeping with the expanded policy goals of the bill, the Committee intends that this report shall guide the agency, and its successor, in the future exercise of its section 6(g) agreement review authority.

In doing so, the Committee wishes to point out that section 6(g) itself is not changed by the bill. This section continues the policy of removing any per se condemnation of concerted action as may be applied under antitrust laws, and there is no vague public interest standard to be applied to such agreements as existed before the 1984 Act. The 1984 Act continues to place the burden of proof on the agency. Ocean carrier agreements should be permitted unless the agency demonstrates that they are likely to produce unreasonable changes to transportation costs or services through reductions in competition.

Ocean carriers continue to be free to structure their own affairs, except when such structure violates specific statutory provisions or the section 6(g) standard. Ocean carriers should continue to have the benefit of regulatory certainty and prompt rulings from the agency. While the agency may continue to weigh reasonable and commercially proven alternative arrangements that have less anti-competitive impact, there is no intent to return to pre-1984 law under which agreement proponents may have been compelled to

show that no less anticompetitive alternative was available to obtain the benefits of the 1916 Act.

CHANGES IN COMPETITIVE CONDITIONS IN THE SHIPPING INDUSTRY.—Since the passage of the 1984 Act, the FMC has taken a narrow and restrictive view of its section 6(g) authority, based on the instructions set forth in the 1984 Act's Conference Report. In addressing the analytical approach to be taken in applying the general standard for agreement consideration, much of the commentary in that report focused on limiting the application of section 6(g); on granting proposed agreements any benefit of the doubt; and on establishing a heavy burden of proof with respect to FMC action. Given the current concerns with regulatory delay, unclear authority, and excessive government intervention and regulatory costs, that emphasis was not without merit. Moreover, at the time the legislation was introduced, debated, and passed (1978-1984), substantial independent competition existed in the form of new and expanding non-conference service. That competition, in addition to the new right of independent action on conference rates, appeared to limit the potential market power of liner conferences.

Today, however, the traditional distinction between conference and independent lines is eroding. Non-conference lines regularly cooperate with their conference rivals under the authority of so-called voluntary discussion agreements. Activities of those agreements have included capacity withholding schemes, coordinated general rate increases, collective action with respect to add-on charges, credit terms, and an assortment of other price-related tariff and contract elements. Although the bill includes pro-competitive reforms, such as prohibiting conferences from restricting a member's contracting authority or issuing mandatory rules with respect to contracts, it does not categorically bar carriers from reducing competition through trade-wide capacity control, rate discussion agreements, and voluntary cooperation on terms and procedures of individual contracts. The likelihood that carriers will continue to pursue such arrangements and other evolving forms of cooperation creates the need for careful agency oversight and policing under the general standard.

Furthermore, the recent trend toward greater operational coordination by means of global strategic alliances, and the merger-driven carrier consolidations now taking place, strongly suggest that international liner shipping is becoming a more concentrated industry. The Committee is concerned that trade-wide agreements established by the potential oligopoly of mega-carriers and global strategic alliances, composed of fewer and more homogeneous members than are today's agreements, may effectively dominate the major U.S. trade lanes in the near future. On the other hand, the Committee also recognizes that, because of ocean carrier alliances, there have actually been an increase in the number of competitors in some trades (e.g., in the North Atlantic), and there may have been fewer mergers than would have been the case in the absence of such alliances. Since global carriers and carrier alliances likely will have diversified their assets and operations across a range of trades, thereby reducing their reliance on revenues from any single trade, compromise on collective pricing activities could be easier and the likelihood of substantially anti-competitive activity could

well increase. The agency must be prepared and able to address and rectify such anti-competitive conditions before they take their toll on importers, exporters, and U.S. ocean borne trade.

ADMINISTRATION OF SECTION 6(g).—In administering the 1984 Act, as amended by the bill, the agency must balance a number of important and potentially conflicting policies and considerations. Foremost of these should be prompt agreement review, minimal government intervention, and continued flexibility in structuring agreements. In addition, however, the agency must remain mindful of many of the broad policies that underlay the 1984 Act. For example, the 1984 Act's declaration of policy, as amended by the bill, expresses the importance of competitive and efficient ocean transportation and placing a greater reliance on the marketplace. The need, in light of ongoing changes in the industry, to exercise vigilance with respect to the potential anti-competitive effects of industry concentration and possible reductions in independent competition in U.S. trade lanes also remains an important and worthwhile goal. In enforcing the 1984 Act, the agency should also continue to be mindful of the historical and international acceptance of conferences and carrier cooperation; however, such factors must be continuously evaluated in the context of evolving industry structure and commercial practices.

Section 6(g) sets forth a three-part test to be employed by the agency in assessing agreements. To warrant injunctive action, the agency must first find, as a threshold matter, that an agreement is likely to result in a "reduction in competition." Second, it must show that an agreement, through this reduction in competition, is likely to produce either a "reduction in transportation service" or an "increase in transportation cost." Third, the agency must determine that the likely reduction in transportation service or increase in transportation cost is "unreasonable."

As an initial matter, the Committee would point out that the word "likely" in the statute clearly indicates that the agency is expected to act prospectively to block substantially anti-competitive carrier plans before they result in adverse effects on shippers and foreign trade. The section contemplates the use of reasoned projections and forward-looking analyses by the agency, based on its substantial industry expertise. It appears that the FMC thus far has given the section a restrictive reading, suggesting that an injunction cannot be won without direct evidence of actual commercial harm suffered by shippers as a result of agreement activity. While evidence of shipper harm may indeed be relevant in certain cases, a blanket requirement for such evidence is not consistent with the text of the statute, and would undermine the agency's ability to take necessary preventive action. Indeed, the Committee directs the agency not to allow the disruption of ocean borne commerce while it seeks to quantify such disruption for evidentiary purposes.

In determining whether an agreement is likely to result in a reduction in competition, the agency must ascertain whether a collective activity or arrangement set forth in an agreement would, as a practical matter, reduce the level of competition (in terms of rates or range of services), either among agreement members or between agreement members and nonmembers. Some types of arrangements, such as rate agreements and capacity withholding, usually

result in a reduction in competition, and in fact have the easing of competitive pressures as the primary aim. For all types of cooperative or rationalization arrangements, the agency must closely examine the agreement authorities and the nature of the parties' operations to determine whether reduced competition is more likely than not. It is not the Committee's intention that the agency expend scarce enforcement resources pursuing insubstantial or de minimus reductions in competition.

The second part of the test is the showing of a likely "reduction in transportation service" or "increase in transportation cost." Of course, if an agreement is in effect and had already produced (or is in the process of producing) such a reduction or increase, evidence of this may be relied upon by the agency. However, if an agreement is not in effect, or is likely to have some future impact, agency action is not foreclosed. Given the agency's resources and expertise, it is capable of assessing and projecting the likely effects of a carrier agreement on transportation costs and service, based on an evaluation of factors such as: the nature of the collective action contemplated under the agreement; agreement members' share of the relevant trades; market concentration; rate levels and rate histories; capacity utilization levels, histories, and projections; ease of entry or exit; and the existence of other overlapping agreements.

Market share is relevant and is a factor in considering whether an agreement is likely to result in a reduction in transportation service or increase in transportation cost, and whether those changes are likely to be unreasonable, but it is only one factor. For example, because S. 414 guarantees a member of an agreement with pricing authority the right of independently negotiating and contracting with a shipper, the aggregated market share of an agreement's members does not by itself indicate a cohesive or coordinated contracting approach to the market. On the other hand, in an agreement to rationalize service and withdraw vessels from service, for example, the carrier's market share could be a substantial consideration. The agency may use economically reasonable projections and forward-looking analysis in determining whether an agreement is likely to result in a reduction in service or an increase in cost.

The third prong of the analysis is a determination as to whether the likely reduction in service or increase in cost is "unreasonable." No further definition of reasonableness is given in the statute, nor is there case law to serve as a guide. However, it is apparent from the context that the reasonableness requirement entails a balancing of the scope or magnitude of the cost increase or service decrease against the likely benefits to be derived from the carrier agreement. These benefits may include, for example, carriers' ability to improve efficiency, lower costs, and increase service options and quality. Other possible benefits include development of an economically sound and efficient U.S.-flag fleet, the prevention or forestalling of further competition-reducing concentration in the industry due to carrier mergers, and the promotion of comity with our trading partners. Enabling carriers to remedy identifiable conditions of rate instability or severe overcapacity may also be a potential agreement benefit, to the extent that such arrangements are in the long term interests of shippers and carriers. This is not to

say, however, that all collective efforts by carriers to increase rates or revenues or lower costs are deemed to be “reasonable” simply on the grounds that they contribute, in the general sense, to industry stability.

In general, the reasonableness requirement entails comparing short term “apples” to an array of medium-term and long-term “oranges.” The test requires the weighing of a number of difficult-to-quantify costs and benefits to various segments of the industry.

In applying the general standard, the agency must consider whether the relevant competitive market includes more than just ocean common carriers providing direct service in a trade. The Committee intends that the agency consider the impact on shippers of an agreement not only in view of competition between ocean common carriers providing direct service in a trade, but also in view of other competitive means of transport. In some cases, alternative liner routings, bulk carriers, charter operators, or air freight carriers may provide competitive alternatives to the direct service provided by ocean common carriers. In considering these alternatives, the agency may gather relevant information from shippers, other carriers and third parties. Although the agency may use its information powers to request market information from the proponents of an agreement, such information must be relevant.

Another aspect of the reasonableness requirement is that the negative impact upon shippers may be offset by the benefits of an agreement. For example, the competitive harm ensuing from conferences, already diminished by the statutory limitations on conference activity, may be offset by the significant benefits of such activity. Also, the degree to which privately-owned ocean common carriers that service U.S. foreign commerce are subjected to competition from state-subsidized and controlled carriers is another consideration. A conference’s ability to address problems of overcapacity and rate instability is an important benefit that the agency must weigh.

Another possible benefit to be considered by the agency is the impact of an agreement on U.S. foreign policy and international comity. The Committee agrees that the United States should act with sensitivity to the interests of its trading partners when administering shipping regulation.

Another important potential benefit to be considered is any efficiency-creating aspects of an agreement. Agreements involving significant carrier integration are, if properly limited to achieve such important benefits, to be favorably considered by the agency and the courts if these benefits are not outweighed by any competitive harm that is likely to result from such integration. Joint ventures and other cooperative agreements can enable carriers to raise necessary capital, attain economies of scale, and rationalize their services.

The Committee intends that ocean carriers be free to structure their own affairs, except when such structuring violates specific statutory provisions or the general standard. Even when an agreement raises potential issues under the general standard, the Committee believes that the procedural framework gives carriers sufficient flexibility. Carriers are able to obtain a prompt ruling from the agency under the provisions for expedited review. If the agency

objects to an agreement under the general standard, the filing party may withdraw it, modify it, or force the agency to make its showing in court.

The Committee would also clarify the range of injunctive remedies available from the district court. The court evaluating an agreement in a section 6(g) proceeding is not limited to the simple binary choice of enjoining or not enjoining an agreement in its entirety. As carrier arrangements grow increasingly complex and global in scope, a more surgical approach is warranted. Thus, upon a request by the agency, or upon its own motion, a court may tailor its injunction to bar certain agreement authorities or application to particular geographic ranges, while leaving other parts of the filed agreement intact.

Finally, the Committee notes that the bill does not adopt the FMC's suggestion that the 6(g) standard be incorporated into the prohibited acts section of the 1984 Act so that excessively anti-competitive agreements could be addressed and acted upon directly by the agency. The 1984 Act, as amended by the bill, continues to require the agency to seek to enjoin such agreements in the federal courts. However, the Committee would encourage the agency to allow shippers or others to contribute to the process of determining whether an injunction should be sought. At present, notices of agreement filings are published in the Federal Register and comments of interested parties are solicited. The agency could encourage even more participation by shippers and others potentially detrimentally affected by agreement authority by issuing notices of inquiry or conducting hearings on new agreement filings or existing agreements, the objective being to more fully apprise the agency of the likely or actual impact of the agreement prior to its seeking an injunction. These proceedings, however, should be held promptly and be of short duration. The Committee is mindful that it may be infeasible for intra-agency proceedings to occur before the agency goes to court, particularly in instances where time is of the essence. But, the Committee does not intend for such hearings to be protracted. The protracted hearings conducted under the pre-1984 Act regime are not favored under section 6(g).

Section 101.—Purpose

This section amends section 2 of the 1984 Act to expand the purpose of the 1984 Act to include the promotion of United States exports.

Section 102.—Definitions

This section adds, deletes, and amends several definitions described in section 3 of the 1984 Act. The most important of these changes are as follows:

Section 3(8) of the 1984 Act is amended to eliminate a loophole through which government owned or controlled ocean common carriers avoid controlled carrier restrictions by registering their vessels in other nations, including nations operating flag of convenience registries.

Section 3(9) of the 1984 Act is amended to redefine the term “deferred rebate” to apply to refunds of freight money tied to agreements to make further shipments with any common carrier. Re-

funds of freight money that are not tied to agreements to make further shipments must be made in accordance with the applicable tariff or service contract to avoid a violation of section 10(b)(2) of the 1984 Act, as amended by the reported bill.

Section 3(10) of the 1984 Act is deleted. The Committee considers the term “fighting ship” to be obsolete. The original definition of a “fighting ship” envisioned an individual ship that would follow a competitor’s ship and offer predatory prices to drive the competitor from the trade. In today’s marketplace, such predatory actions, taken with the intent of driving a carrier from the trade, would be attempted using multiple ship combinations. The substitute amendment would prohibit such predatory behavior under section 10(b) of the prohibited acts.

Section 3(10), as redesignated, of the 1984 Act is amended to clarify the definition of “forest products” and ensure that it reflects current technology developments that have occurred since 1984. The 1984 Act specifically states that the list of products found in section 3(10), as redesignated, is not exclusive, that forest products not specifically described therein can qualify for treatment as “forest products” under the 1984 Act. The Committee recognizes that current and emerging technology allows for the development of new products which can more efficiently utilize forest resources. The Committee intends that such new products be included within the “forest products” definition. Such products include liquid or granular by-products derived from pulping and papermaking. Also included, for example, is a class generally known as “engineered wood products.” These are structural or panel wood products, produced at the mill, glued, or laminated.

Section 3(13), as redesignated, of the 1984 Act is amended to redefine the term “loyalty contract” to eliminate the application of the term to a contract that commits a fixed portion of cargo to a common carrier or an agreement among ocean common carriers, but that does not provide for a deferred rebate arrangement. Additionally, this change conforms to common law definitions which have allowed percentage-based contracts and output requirements contracts absent other devices that anticompetitively tie shippers and carriers. This change was made in response to requests by many shippers who simply are not certain of the volume of cargo they can commit over a fixed time period due to changing market conditions. These shippers believe renegotiating contracts shortly before their expiration date in order to increase the originally specified volume of cargo to match a greater than anticipated production schedule places them at a disadvantage with respect to the common carrier. The Committee understands that “portion” contracts have been viewed as potentially anticompetitive in an ocean transportation market where shippers were limited to dealing with a single large conference or a few small independent ocean carriers in each trade lane who would require shippers to ship all of their cargo for a given commodity or commodities with that carrier or conference. Given the changes made by the bill to provide such shippers with a competitive market for individual common carrier and multiple ocean common carrier service contracts, the Committee believes allowing shippers to enter into portion contracts will benefit shippers, not harm them. The Committee believes that

availability of competitive service contracting options and the prohibition against an unreasonable refusal to deal or negotiate by one or more common carriers in section 10(b)(10) of 1984 Act, as redesignated, provides sufficient protection for shippers from unreasonable portion contract requirements by common carriers.

Section 3(17), as redesignated, of the 1984 Act consolidates the definitions of "ocean freight forwarder" and "NVOCC" into a single definition of "ocean transportation intermediary." Since the bill would consolidate the licensing and bonding requirements for intermediaries under a single section, the Committee chose to use a single term throughout the 1984 Act, as amended by the bill, to cover both types of functions. The bill, as introduced, consolidated the same two definitions into the definition of "ocean freight forwarder." The Committee understands that ocean transportation arrangements are made through a diverse group of intermediaries. Some fit the description of either an ocean freight forwarder or an NVOCC; some perform both functions for different shipments. The Committee also recognizes that some countries use the term "freight forwarder" to include what the 1984 Act defines as NVOCC functions, while many U.S. NVOCCs prefer to be identified by that unique U.S. term. The substitute amendment changed this overarching term from "ocean freight forwarder" to "ocean transportation intermediary" in recognition of the above concerns. The new definition retains the terms "ocean freight forwarder" and "NVOCC" for commercial use by those entities who perform those narrow functions and prefer to be known by the existing terms for commercial business reasons, while providing a single, new term to describe entities who provide the wider variety of services.

Section 3(19), as redesignated, of the 1984 Act redefines the term "service contract" to provide shippers and common carriers with greater flexibility in entering into contractual arrangements. First, the new definition allows more than one shipper collectively to enter into a service contract. The Committee intends that the Department of Justice "safe-harbor" guidelines should apply to the collective activity of shippers with respect to a service contract. Second, the new definition allows NVOCCs to enter into service contracts as common carriers. Some U.S. ocean common carriers have expressed concern that this change conflicts with section 2(3) of the 1984 Act, which states that one of the purposes of the 1984 Act is to encourage the development of an economically sound and efficient United States-flag liner fleet. The Committee, however, believes that this change will provide a more competitive ocean transportation system, and which will ultimately help smaller shippers who often utilize NVOCCs to procure shipping services. The Committee also believes that U.S.-flag carriers provide quality service options, which should benefit from the increased regulatory flexibility provided by the bill. Third, the new definition allows agreements among ocean common carriers, in addition to a conference, to enter into service contracts. The Committee believes this change, coupled with the addition of new section 5(b)(9) of the 1984 Act, as amended by the bill, will substantially increase the competitive options available to shippers who wish to enter into service contracts with multiple ocean carriers. Recent shipping trends indicate a move away from larger carrier conference structure to smaller and

more integrated alliance agreements. Finally, the new definition allows shippers to commit to provide a certain portion of their cargo to a common carrier or agreement among ocean common carriers in a service contract. The rationale for this change is described in the analysis of section 3(13) above. Also, the new definition would clarify that a bill of lading or a receipt for a particular shipment may not be considered a service contract. The amendments to the 1984 Act made by the bill shall not affect the provisions of other laws governing the handling of, and the accessibility of information contained in, bills of lading, receipts, and similar documentation associated with shipments of cargo.

Section 3(21), as redesignated, of the 1984 Act would consolidate in a single location in the 1984 Act the circumstances in which a person is considered a shipper by the 1984 Act. The revised definition is intended only to clarify the meaning of the term “shipper,” as it is defined in the 1984 Act, and interpreted by the FMC, not to change that definition.

Section 103.—Agreements within the scope of the act

This section amends section 4 of the 1984 Act in two areas:

First, the bill deletes the reference to NVOCCs in section 4(a)(5) of the 1984 Act. Section 4(a)(5) of the 1984 Act appears to allow agreements between ocean common carriers and NVOCCs to be filed in the same manner as ocean carrier conference agreements and be provided antitrust immunity. This provision is inconsistent with section 8 of the 1984 Act, which requires agreements between ocean common carriers and NVOCCs to be filed as service contracts subject to the antitrust laws. The FMC has decided that the treatment of these agreements pursuant to section 8 of the 1984 Act should prevail. The Committee agrees and eliminates the conflicting provision in section 4.

Second, the bill amends section 4(b) of the 1984 Act to assure that there is no gap in the coverage of agreements among marine terminal operators that operate facilities serving both the foreign and domestic commerce of the United States. For example, many marine terminal operators enter into agreements that discuss, fix, or regulate rates or other conditions of service that apply at terminals serving carriers that engage in both foreign and domestic commerce of the United States. The bill provides that such agreements are not removed from the scope of the 1984 Act, as amended by the bill, to the extent they involve ocean transportation in the domestic commerce of the United States, but rather are fully encompassed within the 1984 Act, as amended by the bill. Also, section 3(14) of the 1984 Act, as amended by the bill, is amended by section 102 of the bill to implement this intent by defining a marine terminal operator for the purposes of the 1984 Act to include a person that provides wharfage, dock, warehouse, or other terminal facilities in connection with a common carrier that operates in the foreign and domestic commerce of the United States, as well as a carrier that operates in only the foreign commerce of the United States.

Marine terminal operator agreements within the scope of the 1984 Act, as amended by this section of the bill, and the activities conducted pursuant to these agreements, like all other agreements

under the Act, are exempt from the antitrust laws in accordance with section 7 of the 1984 Act.

Section 104.—Agreements

This section amends section 5 of the 1984 Act in three areas:

First, section 5(b)(8) of the 1984 is rewritten to shorten the notice period for independent action on a conference tariff from 10 calendar days to five calendar days and to eliminate a provision which some shippers contend could be interpreted to prevent independent action on unfiled conference tariffs for commodities excepted or exempted from tariff filing by section 8(a)(1) or 16 of the 1984 Act. The Committee intends that conference members have the right of independent action on all conference tariffs.

Second, a new section 5(b)(9) is added to the 1984 Act to provide a mandatory right of independent action on service contracts for members of all ocean common carrier agreements required to be filed under section 5(a), not only members of conference agreements. Ocean common carrier agreements would be: (1) required to allow their members to take independent action on agreement service contracts; (2) required to allow their members to negotiate those independent service contracts without disclosing to the other parties to the agreement the existence of that negotiation or the terms and conditions of a resulting service contract, other than those terms required to be published by new section 8(c)(3) of the 1984 Act, as amended by the bill; (3) prohibited from issuing mandatory rules or requirements affecting a member's right to negotiate and enter into service contracts; and (4) allowed to issue voluntary guidelines relating to the terms and procedures of agreement members' service contracts so long as the guidelines do not require agreement members to comply with the guidelines. The provisions in new section 5(b)(9) of the 1984 Act, as amended by the bill, do not extend to the discussion, agreement and adoption of voluntary guidelines by agreement members concerning their negotiation and use of individual service contracts. Thus, nothing in this Act is intended to preclude agreement members from promulgating voluntary guidelines relating to the terms and procedures of individual service contracts, as long as those guidelines make clear that there is no penalty associated with the failure of a member to follow any such guideline. Conference members may also similarly adopt voluntary guidelines for individual tariff matters. The adoption of voluntary guidelines by an agreement shall not result in an agreement member or agreement members being penalized or otherwise disciplined by the agreement for choosing to deviate from those guidelines. Amending the 1984 Act to provide agreement members with the right to contract individually is intended to foster intra-agreement competition, promote efficiencies, modernize ocean shipping arrangements, and encourage individual shippers and carriers to develop economic partnerships that better suit their business needs. The Committee believes that the right of individual and independent service contracts is the most important change made by the bill and is intended to develop an efficient and market-responsive ocean carrier industry.

Finally, a reference to the Intercoastal Shipping Act, 1933, is deleted. The Intercoastal Shipping Act, 1933, was repealed by the

Interstate Commerce Commission Termination Act of 1995 (Public Law 104–88).

The substitute amendment adopted by the Committee made several changes to the introduced bill’s version of new section 5(b)(9) of the 1984 Act. The introduced bill applied the provisions of this section to conferences, but not to other types of ocean common carrier agreements, and limited this independent action to individual ocean common carrier service contracts. The introduced bill allowed conferences to require their members to disclose the existence of these members’ individual service contracts or negotiations on individual service contracts when the conference entered into negotiations with the same shipper. The introduced bill also did not require that conference voluntary guidelines relating to the terms and procedures of conference members’ service contracts be filed with the FMC. The net effect of the substitute amendment’s changes to new section 5(b)(9) of the 1984 Act is to provide shippers with more options and a more competitive environment for negotiating service contracts with one or more ocean common carriers.

Section 105.—Exemption from antitrust laws

This section would amend section 7 of the 1984 Act to conform it with other amendments to the 1984 Act made by the bill. Under the 1984 Act, loyalty contracts, as currently defined, may be employed if in accordance with the antitrust laws and the FMC regulates their use. The bill would subject loyalty contracts, as redefined by the bill, to antitrust oversight by the Department of Justice. The FMC should provide the Department of Justice with copies of all loyalty contracts that are submitted to the FMC pursuant to section 8(a) of the 1984 Act.

Section 106.—Tariffs

This section would amend section 8 of the 1984 Act in several areas:

First, this section would add “new, assembled motor vehicles” to the list of commodities excepted from tariff and service contract publication requirements in section 8(a) of the 1984 Act. Most common carriage of automobiles is conducted by specialized roll-on, roll-off vessels, usually in very large quantity, single shipment lots pursuant to a service contract. This type of service more closely resembles unregulated contract carriage than common carriage regulated by the 1984 Act. Common carriers employing this method of shipment have in the past petitioned the FMC to exempt them from the publication requirements of section 8(c) of the 1984 Act. Common carriage requirements are intended to protect shipper interests, and to encourage nondiscriminatory shipping practices. The new, assembled automobile shipper market is very concentrated, it employs unique shipping practices, and the Committee believes that common carriage requirements are not necessary for this particular market.

Second, this section would eliminate the requirement in section 8(a) of the 1984 Act that common carrier tariffs be filed with the FMC. The FMC, or its successor, retains its authority pursuant to other sections of the 1984 Act, and other U.S. shipping laws, to

suspend or prohibit the use of tariffs found to violate the 1984 Act, or other U.S. shipping laws. Tariffs provide the shipping public with notice as to the price and service terms of tendered shipping services. The 1984 Act's requirement that common carrier tariffs be kept open to public inspection is retained. Instead of using the FMC's Automated Tariff Filing and Information System (ATFI) for this purpose, the bill would require that common carriers publish their tariffs electronically through private systems. Many common carriers have already developed electronic information publication systems, such as World Wide Web home pages, that are more advanced than ATFI and improve these common carriers' business processes with their customers. The Committee believes that this innovative private sector approach should be encouraged and that common carriers should be free to develop their own means of electronic publication either individually or collectively, including the use of third party information providers. This section authorizes the FMC to prescribe requirements for the accessibility and accuracy of automated tariff systems and review such systems from time to time for compliance with the 1984 Act, as amended by the bill. There should be no government constraints on the design of a private tariff publication system as long as that system assures the integrity of the common carrier's tariff and of the tariff system as a whole, and the system provides the appropriate level of public access to the common carrier's tariff information. However, the Committee believes that tariff information should be simplified and standardized.

Third, this section would make extensive changes to section 8(c) of the 1984 Act concerning service contracts. Consistent with the bill's amendment to the definition of "service contract," section 8(c)(1) would be amended to allow all common carriers, as defined by the 1984 Act, including NVOCCs, and ocean common carriers operating under all types of agreements, not only conference agreements, to enter into service contracts as common carriers with one or more shippers, including a shippers' association. Consistent with the bill's amendment to the 1984 Act's tariff publication requirements, service contracts dealing exclusively with new, assembled motor vehicles would no longer be filed with the FMC and service contract terms for new, assembled motor vehicles would not be required to be published. The FMC shall not accept for filing any service contract excepted or exempted by section 8(c)(2) or section 16 of the 1984 Act, as amended by the bill. The bill would retain the 1984 Act provision providing that the exclusive remedy for a breach of a service contract is an appropriate court, not the FMC. Parties to a service contract may still agree to use a private dispute resolution forum in lieu of a court, but in no case may the dispute resolution occur in a forum controlled by, or affiliated with, one of the parties to the contract. For example, a common carrier that is owned and controlled by a government would be prohibited from mandating in its service contracts that contract disputes be resolved in nationally run arbitration proceedings.

This section would substantially reduce the scope of service contract essential terms that are required to be made public. The Committee recognizes that U.S. exporters are engaged in competition with foreign-based companies who can offer into the world

market similar, if not identical, products. Those foreign-based companies do not currently publish, or otherwise disclose specific terms of the ocean shipping contracts they sign with ocean carriers. Currently, many U.S. exporters are disadvantaged in the world market because their foreign competitors are able to ascertain proprietary business information from their published service contract essential terms. The Committee seeks to eliminate this competitive disadvantage for U.S.-based exporters, and seeks to assure that U.S. exporters continue to produce domestically for world markets. At the same time, the Committee recognizes that the publication of certain service contract essential terms provides U.S. ports, longshore labor, ocean transportation intermediaries, and others useful information for determining cargo flows and facilitate strategic planning and marketing efforts, including the U.S. port range involved in handling shipments pursuant to a service contract. The Committee seeks to ensure that the FMC, its successor, and the shipping public continue to have access to the information necessary to enforce U.S. shipping laws. Additionally, the Committee recognizes that in retaining ocean carrier dispensation from the antitrust laws, while providing ocean carriers with greater discretion in contracting, this alternative regulatory structure must provide a mechanism to ensure that shipping malpractices are capable of being ascertained, and the shipping public may petition a Federal agency for relief. The bill balances these often conflicting requirements by requiring the confidential filing of all service contracts with the FMC, protecting U.S. exporters' most sensitive service contract information from public disclosure, and requiring common carriers and agreements among ocean common carriers to publish certain service contract information to assist U.S. ports, smaller shippers, shippers' associations, and ocean transportation intermediaries, and to ensure that antitrust immunity is not abused.

To achieve this balance, the substitute amendment would require the publication of only the commodity or commodities, the volume or portion of the commodity or commodities covered by the service contract, the duration of the service contract, and the U.S. port range through which the common carrier intends to provide the service covered by the contract. This publication requirement includes U.S. port ranges involved in the transshipment of cargo from one foreign destination to another foreign destination, to the extent that these service contracts are subject to the requirements of the 1984 Act, as amended by the bill. The bill requires common carriers and agreements among ocean common carriers to publish this information for each of their service contracts in tariff format through the same private electronic system they use to publish their tariffs.

This section also adds new sections 8(c)(4) and 8(c)(5) of the 1984 Act, which provide for a new procedure for the disclosure by the FMC, or its successor, of certain unpublished service contract essential terms to address certain collective-bargaining agreement disputes. These provisions do not require the agency to develop expertise in laws and regulations concerning collective-bargaining agreements. The Committee expects the agency to use its best judgment in determining which common carrier service contract

unpublished terms may be relevant as evidence in a collective bargaining dispute. The Committee directs the FMC, and its successor, to give petitions filed in accordance with section 8(c)(4) of the 1984 Act, as amended by the bill, its highest priority in processing and determination to facilitate the timely resolution of the associated collective-bargaining disputes.

This section adds a provision to section 8 of the 1984 Act which will permit marine terminal operators to establish and make available to the public, subject to section 10(d) of the 1984 Act, as amended by the bill, a schedule of rates, regulations, and practices, including limitation of liability for cargo loss or damage, pertaining to the receiving, delivering, handling or storing of property on the marine terminal. The limitations for cargo loss or damage must be consistent with domestic law and international conventions and agreements. Such schedules shall be enforceable by an appropriate court, not by the FMC, as an implied contract, without proof of actual knowledge of its provisions. If a marine terminal operator has an actual contract with a person covering the services rendered, such a schedule would not be enforceable as an implied contract with respect to that person. In the past, marine terminal operators established and filed tariffs with the FMC for their services pursuant to FMC regulations. This new provision is necessary to ensure that the operators of essential marine terminal transportation facilities are promptly and fairly compensated for the services they provide to waterborne commerce.

This section also would amend section 8 of the 1984 Act to authorize the FMC to prescribe regulations for the accessibility and accuracy of automated tariff systems and for the form and manner of marine terminal operator schedules authorized by that section. The agency also is authorized to prohibit the use of any automated tariff publication system it determines has failed to meet the requirements established under section 8 of the 1984 Act, as amended by the bill.

Finally, this section would amend section 8 of the 1984 Act in several places to conform this section with amendments made to other sections of the 1984 Act by the bill.

The substitute amendment constituted a significant shift in the bill sponsors' direction on increasing confidentiality for service contract essential terms. The introduced bill would have authorized complete confidentiality for service contracts signed by individual ocean carriers and retained current filing and publication requirements for service contracts signed by two or more ocean carriers or an agreement among ocean carriers.

The Committee found that the industry was divided over the question of whether current ocean carrier antitrust immunity should apply to ocean carrier discussions concerning individual ocean carrier service contracts. Ocean carriers and large volume shippers supported the extension of ocean carrier antitrust immunity to individual service contracts to enable ocean carrier agreements, such as the current "alliances," to jointly negotiate confidential service contracts with shippers. Many shippers' associations, NVOCCs, and ocean freight forwarders opposed the application of ocean carrier antitrust immunity to discussions or negotiations of individual service contracts based on their concern that this would

allow ocean carrier conferences to allocate confidential contracts among their members and allow conferences to subject these intermediaries to concerted, unfair discrimination under the protection of complete contract confidentiality. Also, smaller U.S. ocean carriers that depended on cooperative ventures with other conference members to compete with larger ocean carriers stated their need for individual ocean carrier and multiple ocean carrier service contracts to be treated the same with respect to confidentiality of service contract terms. To do otherwise, they argued, would provide an incentive for smaller carriers to merge with other carriers in order to remain competitive in the world market. In addition, the committee questioned whether individual ocean common carrier actions could legally be segregated from ocean common carrier actions which were authorized to be considered collectively, which could allow anticompetitive collective activity to occur under the guise of confidential individual contracts.

The Committee believed that the original proposal on contract confidentiality could produce undesirable results. Therefore, the Committee chose a different approach to address service contract confidentiality. The substitute amendment replaced the two-tiered system where individual ocean carrier service contracts were not filed and completely confidential, and multiple ocean carrier service contracts were filed and published, with a single system in which all contracts are filed, but substantially less service contract information is published. The substitute amendment attempts to balance competing considerations by shielding from public scrutiny certain contract terms that disclose sensitive business information, while providing the shipping public with certain terms for the purpose of monitoring shipping practices in order to petition for relief of unfair or predatory actions.

The substitute amendment also would retain the current statutory language of section 8(d) of the 1984 Act, which the bill as introduced would have amended; prohibit the use of a biased forum for the resolution of service contract disputes, which was not included in the introduced bill; and clarified the applicability of section 10 of the 1984 Act to the bill's new marine terminal operator schedule provision.

Section 107.—Automated tariff filing and information system

This section would repeal the authorization for the FMC's Automated Tariff Filing and Information System, since the function of providing tariff information would be delegated to private entities.

Section 108.—Controlled carriers

This section of the bill would amend section 9 of the 1984 Act in several places to increase the FMC's authority to prevent and address unjust or unreasonable actions by controlled carriers. This section would direct the FMC to take into account whether the constructive costs of a non-controlled carrier with similar service are met by the controlled carrier's challenged prices when the FMC is not able to accurately determine the actual costs of the controlled carrier; set the time period after the FMC's request for information in which the agency must make a determination on the controlled carrier's rates, charges, classifications, rules, or regulations; reduce

the notice period for FMC actions pursuant to section 9 of the 1984 Act from 60 days to 30 days; and eliminate three exceptions to this section of the 1984 Act. Also, this section would conform this section with other amendments made to the 1984 Act by the bill. The Committee is concerned about the aggressive growth of certain controlled carriers, and would hope that new authority under section 9 will allow the FMC, and its successor, to move forward aggressively to ensure that carriers controlled by foreign governments not be allowed to utilize the benefits of operating under the control of, and with the support of, a government to displace carriers operating under normal commercial considerations.

Section 109.—Prohibited acts

This section would make several amendments to section 10 of the 1984 Act:

Amendments to section 10(b) of the 1984 Act—

The prohibited acts described in section 10(b) of the 1984 Act would be substantially revised. Current sections 10(b)(1) through (3) of the 1984 Act, which are intended to maintain the integrity of the common carrier tariff and service contract systems, would be replaced by a single new section 10(b)(2), which is intended to accomplish the same purpose. Current sections 10(b)(4) and (5) would be redesignated as sections 10(b)(1) and (3), respectively. Current section 10(b)(6), to be redesignated as section 10(b)(4), would be amended to clarify that it applies only to service pursuant to a tariff and includes charges as well as rates. Current section 10(b)(7) of the 1984 Act, to be redesignated as section 10(b)(6), would be amended to replace the reference to “a fighting ship” with a description of the predatory behavior which the Committee believes should be prohibited by the 1984 Act. The amendment to section 10(b)(6), as redesignated, was included in the substitute amendment, but not the bill as introduced.

Current sections 10(b)(9) through (13) of the 1984 Act would be replaced with new sections 10(b)(5) and (8) through (10). New section 10(b)(5), combined with section 10(b)(4), as redesignated, would provide the necessary guidance with respect to common carrier discriminatory practices pursuant to tariffs and service contracts in place of current section 10(b)(10). New sections 10(b)(8) and (9) would provide the necessary guidance with respect to preference or advantage given, or prejudice or disadvantage imposed, by a common carrier pursuant to tariffs and service contracts in place of current sections 10(b)(11) and (12). New section 10(b)(10) would provide the necessary guidance with respect to a common carrier’s refusal to deal or negotiate in place of current sections 10(b)(12) and (13). The Committee determined that the current prohibited acts in section 10(b), which are a combination of prohibited acts that were either originally enacted by the Shipping Act, 1916, or added by the 1984 Act, yielded an unclear, and possibly contradictory, set of guidelines for common carrier actions. In addition to providing common carriers and shippers greater flexibility to tailor service contracts to suit different shippers’ requirements without collapsing the service contract rate structure, the Committee intended to revise section 10(b) to improve its overall clarity and consistency.

New sections 10(b)(4) and (8) retain the strong common carriage requirements of the tariff system. Differences in rates charged pursuant to common carrier tariffs must be fair and just for all users of the tariff system. Differences in services provided pursuant to common carrier tariffs must be reasonable for all users of the tariff system. These differences should be based on transportation-related factors in order to be fair and just or reasonable. The Committee expects the FMC, and its successor, to interpret the standards included in these new provisions in the same manner as those standards in the related current provisions of the 1984 Act have been interpreted.

New sections 10(b)(5) and (9) substantially increase the discretion given to common carriers to provide different service contract terms to similarly situated shippers. In addition to eliminating the current requirement in section 8(c) of the 1984 Act that ocean carriers provide the same service contract terms to similarly situated shippers, the bill narrows the application of the prohibited acts with respect to service pursuant to common carrier service contracts. Sections 10(b)(5) and (9) of the 1984 Act, as amended by the bill, would restrict common carrier service contracting flexibility in only three, narrow, ways.

First, sections 10(b)(5) and (9) of the 1984 Act, as amended by the bill, would protect localities from unjust discrimination and undue or unreasonable preference, advantage, prejudice, or disadvantage as a result of common carrier service contracts. The Committee intends the application of these prohibitions to a locality to be limited to circumstances in which the prohibited actions are clearly targeted at the locality, not to circumstances where the actions are targeted at a particular shipper or ocean transportation intermediary which happens to be associated with that locality. An example of this would include a clear pattern of service contracting by a common carrier that imposes an unreasonable disadvantage on all shipments from a specific nation or region of a nation, including the United States. Second, the amendments made by this section would retain similar protections for ports from unjust discrimination and undue or unreasonable preference, advantage, prejudice, or disadvantage as a result of common carrier service contracts as currently exist under the 1984 Act through references to ports and localities. Third, the amendments made by this section would protect shippers and ocean transportation intermediaries from unjust discrimination and undue or unreasonable preference, advantage, prejudice, or disadvantage as a result of common carrier service contracts due to their status as shippers' associations or ocean transportation intermediaries.

The Committee intends the application of sections 10(b)(5) and (9) of the 1984 Act, as amended by the bill, with respect to protection for shippers' associations and ocean transportation intermediaries to be limited to circumstances in which the prohibited actions are clearly targeted at shippers' associations and ocean transportation intermediaries in general, not to circumstances where the actions are targeted at a particular shippers' association or ocean transportation intermediary. An example of such prohibited activity would include a clear pattern of unjustly discriminatory practices by a common carrier with respect to all shippers' as-

sociation service contracts. The Committee expects the amendments to the 1984 Act by the bill will result in a much more competitive environment for ocean transportation rates and services. This environment should provide shippers' associations and ocean transportation intermediaries with more options when shopping for ocean transportation services and free common carriers to compete with each other to obtain shippers' associations and ocean transportation intermediaries as customers. Therefore, the Committee believes that shippers' associations and ocean transportation intermediaries require less protection as individuals in this more competitive marketplace. The Committee intends that common carriers be afforded the maximum flexibility to differentiate their service contract terms and conditions with respect to individual shippers and ocean transportation intermediaries in this more competitive environment. The Committee directs the FMC, and its successor, to focus the efforts of its limited enforcement resources, with respect to common carrier service contracts, on the most egregious examples of unjust discrimination and undue or unreasonable preference, advantage, prejudice, or disadvantage as a result of common carrier service contracting.

This section also would conform section 10(b) of the 1984 Act with other amendments made by the bill.

The substitute amendment's changes to section 10(b) differ substantially from those of the introduced bill. The introduced bill continued the reference to "fighting ship" and amended current sections 10(b)(10) through (13) of the 1984 Act, redesignating them as new sections 10(b)(7) through (10) to consistently apply the service contract exception. The substitute amendment replaced current sections 10(b)(10) through (13) of the 1984 Act with new sections 10(b)(5) and 10(b)(8) through (10), as described above.

Amendments to section 10(c) of the 1984 Act—

This section would conform section 10(c)(5) of the 1984 Act with other amendments made by the bill.

Amendments to section 10(d) of the 1984 Act—

This section would amend section 10(d)(3) of the 1984 Act to revise the application of certain prohibited acts in section 10(b) to marine terminal operators, and add the application of section 10(b)(13) of the 1984 Act, as amended by the bill, to ocean freight forwarders. The bill would also conform section 10(d) of the 1984 Act with other amendments made by the bill. The application of section 10(b)(13) of the 1984 Act, as amended by the bill, to ocean freight forwarders was included in the substitute amendment, but not in the introduced bill.

Section 110.—Complaints, investigations, reports, and reparations

This section would conform section 11 of the 1984 Act with other amendments made by the bill.

Section 111.—Foreign Shipping Practices Act of 1988

This section would amend the Foreign Shipping Practices Act of 1988 to expand the authority of the FMC, and its successor, to take actions against foreign carrier service contracts, as well as tariffs and to conform the Foreign Shipping Practices Act of 1988 with other amendments made by the bill.

Section 112.—Penalties

This section would amend section 13 of the 1984 Act to provide the FMC, and its successor, with the authority to enforce penalties by providing authority to place a maritime lien on vessels operated by ocean common carriers, authorize an additional penalty to authorize the refusal or revocation of clearances to conduct business in U.S. ports, and conform section 13 with other amendments made by the bill. Some ocean common carriers have expressed concern that the authority provided to the FMC, and its successor, to authorize the refusal or revocation of clearances to conduct business in U.S. ports in response to an ocean common carrier's refusal to produce information required by a subpoena would deprive that carrier of the right to contest such a subpoena in court. The Committee notes that an ocean common carrier also has the right to contest the imposition of this new penalty in court in such a situation.

Section 113.—Reports and certificates

This section would amend section 15 of the 1984 Act to eliminate a requirement that the chief executive officer of each common carrier and other transportation companies provide periodic written certifications to the FMC as to the company's policy prohibiting the payment or receipt of unlawful rebates. The elimination of this provision is intended to remove an unnecessary paperwork burden from the ocean transportation industry, and should not be interpreted as relaxing the 1984 Act's prohibition against deferred rebates.

Section 114.—Exemptions

This section would amend section 16 of the 1984 Act to facilitate the exemption of classes of agreements between persons subject to the 1984 Act or any specified activities of those persons from any requirements of the 1984 Act by eliminating two of the four tests applied to applications for such exemptions. The policy underlying this change is that while Congress has been able to identify broad areas of ocean shipping commerce for which reduced regulation is clearly warranted, the FMC is more capable of examining through the administrative process specific regulatory provisions and practices not yet addressed by Congress to determine where they can be deregulated consistent with the policies of Congress.

Section 115.—Agency Reports and Advisory Commission

This section would repeal section 18 of the 1984 Act. Section 18 authorized the establishment of an Advisory Commission in order to review the operation of the 1984 Act. The activities required or authorized by this section of the 1984 Act were completed several years ago.

Section 116.—Ocean freight forwarders

This section would amend section 19 of the 1984 Act in several areas:

First, this section would apply the provisions of section 19 of the 1984 Act to all ocean transportation intermediaries, including NVOCCs, not only to ocean freight forwarders. Under the 1984 Act,

NVOCCs are required to maintain a bond, proof of insurance, or other surety, but are not required to be licensed. This section would now require certain NVOCCs to be licensed.

Second, this section would apply the licensing requirements only to persons in the United States. The Committee directs the FMC to determine when foreign-based entities conducting business in the United States are to be considered persons in the United States for the purposes of this section.

Third, this section would require the bonding of all ocean transportation intermediaries as a means of insuring their financial responsibility and add an alternative process for resolving claims against such a bond. In determining the amount of the bond, the Committee directs the FMC to consider that the licensing requirements in subsection (a) on the fitness of the ocean transportation intermediary do not apply to certain foreign-based entities providing ocean transportation intermediary services in the United States, and to consider the difference in potential for claims against the bond between licensed and unlicensed intermediaries when developing bond requirements. The 1984 Act prescribes that a person pursuing a claim against an NVOCC bond must obtain a court judgment to collect on that claim. While the bill would provide for a similar process for claims against ocean transportation intermediary bonds, it would also allow the surety company to settle the claim with the consent of the insured ocean transportation intermediary or after the ocean transportation intermediary has failed to respond to adequate notice to address the validity of the claim. The Committee directs the FMC to establish the minimum time period which may be considered adequate notice for this purpose.

Damages which would be covered by the bond would include those suffered by ocean common carriers, shippers and others arising from any activities authorized or required by the 1984 Act, as amended by the bill, or referred to in the definition of "ocean transportation intermediary" in section 3(17) of the 1984 Act, as amended by the bill. This would include the activities of ocean freight forwarders as defined in section 3(17)(A), and the activities of NVOCCs as defined in section 3(17)(B), including liabilities related to service contract obligations. The bonds would cover judgments and valid claims resulting directly or indirectly from, for example, the loss or conversion of cargo by the bonded entity or from the negligence or complicity of the bonded entity, as well as from non-performance of services. Once a judgment is entered against a bonded ocean transportation intermediary, the surety company would be expected to pay the judgment from the bond funds, without requiring further evidence of bills of lading or other documentation going to the validity, rather than the subject matter, of the claim. The Committee directs the FMC to prescribe regulations defining transportation-related activities of ocean transportation intermediaries which are subject to the financial responsibility requirements of section 19(b)(1) of the 1984 Act, as amended by the bill.

Due to the diversity of activities conducted by different ocean transportation intermediaries, the Committee directs the FMC to establish a range of licensing and financial responsibility require-

ments commensurate with the scope of activities conducted by different ocean transportation intermediaries, and the past fitness of the ocean transportation intermediary in the performance of intermediary services.

Fourth, this section would include in the 1984 Act a provision providing for reasonable ocean freight forwarder compensation by groups of ocean common carriers that is currently included in section 641(I) the Tariff Act of 1930. This section of the bill would remove the requirement in current law that the freight forwarder (section 3(17)(A) ocean transportation intermediary) also be a customs broker.

Finally, this section would conform section 19 of the 1984 Act with other amendments made by the bill. The substitute amendment changed the process included in the introduced bill for payment of a claim against an ocean transportation intermediary's bond.

Section 117.—Contracts, agreements, and licenses under prior shipping legislation

This section would amend section 20 of the 1984 Act which includes savings provisions for certain agreements and contracts in effect, suits filed, and regulations issued by the FMC prior to the effective date of the amendments to the 1984 Act made by the bill.

Section 118.—Surety for non-vessel-operating common carriers

This section would repeal section 23 of the 1984 Act. Provisions requiring a bond, proof of insurance, or other surety from NVOCCs have been included in section 19 of the 1984 Act, as amended by the bill.

Section 119.—Replacement of Federal Maritime Commission with Intermodal Transportation Board

This section would amend the 1984 Act to conform with the transfer of functions of the FMC to the ITB, effective January 1, 1999.

TITLE II—TRANSFER OF FUNCTIONS OF THE FEDERAL MARITIME COMMISSION TO THE INTERMODAL TRANSPORTATION BOARD

This title would rename the Surface Transportation Board as the Intermodal Transportation Board, transfer the functions of the FMC to the ITB, adjust the membership of the ITB to reflect the added maritime regulation responsibilities, and terminate the FMC on January 1, 1999. Because this title would transfer responsibility for administering the provisions of the 1984 Act, as amended by the bill, to the ITB after those amendments are effective, this title requires the FMC to consult with the STB during the development of the regulations implementing the amendments made by the bill. In amending the qualification requirements for ITB members, this title would prevent domination within the Board of a particular transportation mode (surface or maritime), sector (private or public), or political party by requiring the Board membership to be balanced in these three characteristics. This title also would authorize FMC appropriations in the amount of \$15 million for fiscal year

1998. STB appropriations are currently authorized through fiscal year 1998. The bill does not authorize appropriations for the FMC, STB, or ITB for fiscal year 1999. The Committee expects to address fiscal year 1999 authorizations for these agencies at a later date.

TITLE III—AMENDMENTS TO OTHER SHIPPING AND MARITIME LAWS

Section 301.—Amendments to section 19 of the Merchant Marine Act, 1920

This section would amend section 19 of the Merchant Marine Act, 1920, to clarify that conditions unfavorable to shipping in the foreign trade include pricing practices employed by owners, operators, agents, or masters of vessels of a foreign country. The FMC has held that the term “practices employed by owners, operators, agents, or masters of vessels of a foreign country” in section 19 of the Merchant Marine Act, 1920, includes pricing practices. The Committee agrees, and would amend section 19 to clarify that such pricing practices are within the scope of that section. Section 301 of the bill would also clarify that service contracts of a common carrier are subject to actions by the agency under section 19 of the Merchant Marine Act, 1920, and conform section 19 with amendments made to the 1984 Act by the bill.

Section 302.—Technical corrections

This section would make technical corrections in several laws to conform with amendments made by the bill.

TITLE IV—MERCHANT MARINER BENEFITS

Section 401.—Merchant mariner benefits

This section would extend eligibility for veterans’ burial benefits, funeral benefits, and related benefits for veterans of service in the United States Merchant Marine in support of U.S. Armed Forces from August 16, 1945 to December 31, 1946. Currently, the dates provided for veterans’ benefits to U.S. merchant mariners for World War II service are December 7, 1941 to August 16, 1945.

The efforts of American merchant mariners to secure veterans’ benefits pursuant to Public Law 95–202, have been long, and only partially successful, despite merit and clear eligibility under the statute. The casualty rate for the U.S. Merchant Marine during World War II was higher than the casualty rate for the U.S. Army, U.S. Navy, or U.S. Coast Guard, and only second to the U.S. Marine Corps. In all, 5662 merchant mariners lost their lives or were declared missing in action. Another 609 merchant mariners became prisoners of war and thousands were wounded. The Director of the Selective Service System at the time, General Lewis B. Hershey, wrote to local draft boards:

Service in the merchant marine * * * is so closely allied to service in the armed forces that men found by the local board to be actively engaged at sea may be considered engaged in the defense of the country. Such service may be considered as tantamount to military service.

Yet, in 1980, when a group of merchant mariners filed an application for veterans' status pursuant to Public Law 95-202, it was denied by the Secretary of the Air Force, to whom such authority was delegated. The applicants sought judicial review of this adverse determination, and the Federal District Court held in 1987 that the Secretary abused his discretion under the statute in denying the application. As a consequence of the Court's decision, the Secretary reconsidered his denial and granted veterans' status to merchant mariners who served through V-J day, August 15, 1945, even though hostilities were not declared ended by President Truman until December 31, 1946 (the date that was applied to veterans' status for all branches of the U.S. Armed Forces). In addition, another group similarly situated to U.S. merchant mariners, the Guam Combat Patrol, was given veterans' status without a cutoff date (effectively through December 31, 1946) by the Secretary.

Numerous applications to the Secretary on behalf of remaining merchant mariners to extend the cutoff date to December 31, 1946, have been denied—despite the fact that between August 16, 1945 and December 31, 1946, ten U.S. Merchant Marine vessels operating in support of U.S. Armed Forces were damaged or lost and merchant marine casualties were sustained as a result of enemy instruments of war. The Committee agrees with the District Court that Public Law 95-202 gives the Secretary broad discretion to extend the cutoff date and rectify a blatant inequity. Frustrated by the failure of the Secretary to do so for nearly a decade, the Committee reluctantly concludes that a legislative solution is the only alternative.

TITLE V—CERTAIN LOAN GUARANTEES AND COMMITMENTS

Section 501.—Certain loan guarantees and commitments

This section would prohibit the Secretary of Transportation from issuing a guarantee or commitment to guarantee a loan for the construction, reconstruction, or reconditioning of a vessel under the authority of title XI of the Merchant Marine Act, 1936, until the FMC certifies that the operator of that vessel has not violated certain U.S. shipping laws within the previous five years and is not under formal investigation by the FMC for a violation of those shipping laws. This provision would apply to the operator of the vessel to be constructed, reconstructed, or reconditioned with the assistance of the title XI program, but not to any other affiliated vessel operators. This provision would apply to guarantees and commitments to guarantee made by the Secretary of Transportation after the date of enactment of the bill. This provision was included in an amendment by Senator McCain that was adopted by the Committee, and was not included in the introduced bill.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted

is enclosed in black brackets, new material is printed in italic, existing law in which no change is proposed is shown in roman)¹:

Section 641, Tariff Act of 1930

[19 U.S.C. 1641]

§ 1641. Customs brokers

(a) DEFINITIONS.— As used in this section:

(1) The term “customs broker” means any person granted a customs broker’s license by the Secretary under subsection (b).

(2) The term “customs business” means those activities involving transactions with the Customs Service concerning the entry and admissibility of merchandise, its classification and valuation, the payment of duties, taxes, or other charges, assessed or collected by the Customs Service upon merchandise by reason of its importation, or the refund, rebate, or drawback thereof. It also includes the preparation of documents or forms in any format and the electronic transmission of documents, invoices, bills, or parts thereof, intended to be filed with the Customs Service in furtherance of such activities, whether or not signed or filed by the preparer, or activities relating to such preparation, but does not include the mere electronic transmission of data received for transmission to Customs.

(3) The term “Secretary” means the Secretary of the Treasury.

(b) CUSTOM BROKER’S LICENSES.—

(1) IN GENERAL.—No person may conduct customs business (other than solely on behalf of that person) unless that person holds a valid customs broker’s license issued by the Secretary under paragraph (2) or (3).

(2) LICENSES FOR INDIVIDUALS.—The Secretary may grant an individual a customs broker’s license only if that individual is a citizen of the United States. Before granting the license, the Secretary may require an applicant to show any facts deemed necessary to establish that the applicant is of good moral character and qualified to render valuable service to others in the conduct of customs business. In assessing the qualifications of an applicant, the Secretary may conduct an examination to determine the applicant’s knowledge of customs and related laws, regulations and procedures, bookkeeping, accounting, and all others appropriate matters.

(3) LICENSES FOR CORPORATIONS, ETC.—The Secretary may grant a customs broker’s license to any corporation, association, or partnership that is organized or existing under the laws of any of the several States of the United States if at least one officer of the corporation or association, or one member of the partnership, holds a valid customs broker’s license granted under paragraph (2).

¹In compliance with the last sentence of such paragraph, it is the opinion of the Committee that it is necessary to dispense with the requirements of this paragraph, as they apply to mere changes in references to the Surface Transportation Board in statutes not otherwise amended, in order to expedite the business of the Senate.

(4) DUTIES.—A customs broker shall exercise responsible supervision and control over the customs business that it conducts.

(5) LAPSE OF LICENSE.—The failure of a customs broker that is licensed as a corporation, association, or partnership under paragraph (3) to have, for any continuous period of 120 days, at least one officer of the corporation or association, or at least one member of the partnership, validly licensed under paragraph (2) shall, in addition to causing the broker to be subject to any other sanction under this section (including paragraph (6)) result in the revocation by operation of law of its license.

(6) PROHIBITED ACTS.—Any person who intentionally transacts customs business, other than solely on the behalf of that person, without holding a valid customs broker's license granted to that person under this subsection shall be liable to the United States for a monetary penalty not to exceed \$10,000 for each such transaction as well as for each violation of any other provision of this section. This penalty shall be assessed in the same manner and under the same procedures as the monetary penalties provided for in subsection (d)(2)(A).

(c) CUSTOMS BROKER'S PERMITS.—

(1) IN GENERAL.—Each person granted a customs broker's license under subsection (b) shall be issued, in accordance with such regulations as the Secretary shall prescribe, either or both of the following:

(A) A national permit for the conduct of such customs business as the Secretary prescribes by regulation.

(B) A permit for each customs district in which that person conducts customs business and, except as provided in paragraph (2), regularly employs at least 1 individual who is licensed under subsection (b)(2) to exercise responsible supervision and control over the customs business conducted by that person in that district.

(2) EXCEPTION.—If a person granted a customs broker's license under subsection (b) can demonstrate to the satisfaction of the Secretary that—

(A) he regularly employs in the region in which that district is located at least one individual who is licensed under subsection (b)(2), and

(B) that sufficient procedures exist within the company for the person employed in that region to exercise responsible supervision and control over the customs business conducted by that person in that district,

the Secretary may waive the requirement in paragraph (1)(B).

(3) LAPSE OF PERMIT.—The failure of a customs broker granted a permit under paragraph (1) to employ, for any continuous period of 180 days, at least one individual who is licensed under subsection (b)(2) within the district or region (if paragraph (2) applies) for which a permit was issued shall, in addition to causing the broker to be subject to any other sanction under this section (including any in subsection (d)), result in the revocation by operation of law of the permit.

(4) APPOINTMENT OF SUBAGENTS.—Notwithstanding subsection (c)(1), upon the implementation by the Secretary under

section 413(b)(2) [19 U.S.C. 1413(b)(2)] of the component of the National Customs Automation Program referred to in section 411(a)(2)(B)[19 U.S.C. 1411(a)(2)(B)], a licensed broker may appoint another licensed broker holding a permit in a customs district to act on its behalf as its subagent in that district if such activity relates to the filing of information that is permitted by law or regulation to be filed electronically. A licensed broker appointing a subagent pursuant to this paragraph shall remain liable for any and all obligations arising under bond and any and all duties, taxes, and fees, as well as any other liabilities imposed by law, and shall be precluded from delegating to a subagent such liability.

(d) DISCIPLINARY PROCEEDINGS.—

(1) GENERAL RULE.—The Secretary may impose a monetary penalty in all cases with the exception of the infractions described in clause (iii) of subparagraph (B) of this subsection, or revoke or suspend a license or permit of any customs broker, if it is shown that the broker—

(A) has made or caused to be made in any application for any license or permit under this section, or report filed with the Customs Service, any statement which was, at the time and in light of the circumstances under which it was made, false or misleading with respect to any material fact, or has omitted to state in any such application or report any material fact which was required to be stated therein;

(B) has been convicted at any time after the filing of an application for license under subsection (b) of any felony or misdemeanor which the Secretary finds—

(i) involved the importation or exportation of merchandise;

(ii) arose out of the conduct of its customs business;

or

(iii) involved larceny, theft, robbery, extortion, forgery, counterfeiting, fraudulent concealment, embezzlement, fraudulent conversion, or misappropriation of funds;

(C) has violated any provision of any law enforced by the Customs Service or the rules or regulations issued under any such provision;

(D) has counseled, commanded, induced, procured, or knowingly aided or abetted the violations by any other person of any provision of any law enforced by the Customs Service, or the rules or regulations issued under any such provision;

(E) has knowingly employed, or continues to employ, any person who has been convicted of a felony, without written approval of such employment from the Secretary; or

(F) has, in the course of its customs business, with intent to defraud, in any manner willfully and knowingly deceived, misled or threatened any client or prospective client.

(2) PROCEDURES.—

(A) MONETARY PENALTY.—Unless action has been taken under subparagraph (B), the appropriate customs officer shall serve notice in writing upon any customs broker to show cause why the broker should not be subject to a monetary penalty not to exceed \$30,000 in total for a violation or violations of this section. The notice shall advise the customs broker of the allegations or complaints against him and shall explain that the broker has a right to respond to the allegations or complaints in writing within 30 days of the date of the notice. Before imposing a monetary penalty, the customs officer shall consider the allegations or complaints and any timely response made by the customs broker and issue a written decision. A customs broker against whom a monetary penalty has been issued under this section shall have a reasonable opportunity under section 618 [19 U.S.C. 1618] to make representations seeking remission or mitigation of the monetary penalty. Following the conclusion of any proceeding under section 618 [19 U.S.C. 1618], the appropriate customs officer shall provide to the customs broker a written statement which sets forth the final determination and the findings of fact and conclusions of law on which such determination is based.

(B) REVOCATION OR SUSPENSION.—The Customs Service may, for good and sufficient reason, serve notice in writing upon any customs broker to show cause why a license or permit issued under this section should not be revoked or suspended. The notice shall be in the form of a statement specifically setting forth the grounds of the complaint, and shall allow the customs broker 30 days to respond. If no response is filed, or the Customs Service determines that the revocation or suspension is still warranted, it shall notify the customs broker in writing of a hearing to be held within 30 days, or at a later date if the broker requests an extension and shows good cause therefor, before an administrative law judge appointed pursuant to section 3105 of title 5, United States Code, who shall serve as the hearing officer. If the customs broker waives the hearing, or the broker or his designated representative fails to appear at the appointed time and place, the hearing officer shall make findings and recommendations based on the record submitted by the parties. At the hearing, the customs broker may be represented by counsel, and all proceedings, including the proof of the charges and the response thereto shall be presented with testimony taken under oath and the right of cross-examination accorded to both parties. A transcript of the hearing shall be made and a copy will be provided to the Customs Service and the customs broker; which shall thereafter be provided reasonable opportunity to file a post-hearing brief. Following the conclusion of the hearing, the hearing officer shall transmit promptly the record of the hearing along with the findings of fact and recommendations to the Secretary for decision. The Secretary will issue a written decision, based solely on the

record, setting forth the findings of fact and the reasons for the decision. Such decision may provide for the sanction contained in the notice to show cause or any lesser sanction authorized by this subsection, including a monetary penalty not to exceed \$30,000, than was contained in the notice to show cause.

(3) SETTLEMENT AND COMPROMISE.—The Secretary may settle and compromise any disciplinary proceeding which has been instituted under this subsection according to the terms and conditions agreed to by the parties, including but not limited to the reduction of any proposed suspension or revocation to a monetary penalty.

(4) LIMITATION OF ACTIONS.—Notwithstanding section 621 [19 U.S.C. 1621], no proceeding under this subsection or subsection (b) (6) shall be commenced unless such proceeding is instituted by the appropriate service of written notice within 5 years from the date the alleged violation was committed; except that if the alleged violation consists of fraud, the 5-year period of limitation shall commence running from the time such alleged violation was discovered.

(e) JUDICIAL APPEAL.—

(1) IN GENERAL.—A customs broker, applicant, or other person directly affected may appeal any decision of the Secretary denying or revoking a license or permit under subsection (b) or (c), or revoking or suspending a license or permit or imposing a monetary penalty in lieu thereof under subsection (d)(2)(B), by filing in the Court of International Trade, within 60 days after the issuance of the decision or order, a written petition requesting that the decision or order be modified or set aside in whole or in part. A copy of the petition shall be transmitted promptly by the clerk of the court to the Secretary or his designee. In cases involving revocation or suspension of a license or permit or imposition of a monetary penalty in lieu thereof under subsection (d)(2)(B), after receipt of the petition, the Secretary shall file in court the record upon which the decision or order complained of was entered, as provided in section 2635(d) of title 28, United States Code.

(2) CONSIDERATION OF OBJECTIONS.—The court shall not consider any objection to the decision or order of the Secretary, or to the introduction of evidence or testimony, unless that objection was raised before the hearing officer in suspension or revocation proceedings unless there were reasonable grounds for failure to do so.

(3) CONCLUSIVENESS OF FINDINGS.—The findings of the Secretary as to the facts, if supported by substantial evidence, shall be conclusive.

(4) ADDITIONAL EVIDENCE.—If any party applies to the court for leave to present additional evidence and the court is satisfied that the additional evidence is material and that reasonable grounds existed for the failure to present the evidence in the proceedings before the hearing officer, the court may order the additional evidence to be taken before the hearing officer and to be presented in a manner and upon the terms and conditions prescribed by the court. The Secretary may modify the

findings of facts on the basis of the additional evidence presented. The Secretary shall then file with the court any new or modified findings of fact which shall be conclusive of supported by substantial evidence, together with a recommendation, if any, for the modification or setting aside of the original decision or order.

(5) EFFECT OF PROCEEDINGS.—The commencement of proceedings under this subsection shall, unless specifically ordered by the court, operate as a stay of the decision of the Secretary except in the case of a denial of a license or permit.

(6) FAILURE TO APPEAL.—If an appeal is not filed within the time limits specified in this section, the decision by the Secretary shall be final and conclusive. In the case of a monetary penalty imposed under subsection (d)(2)(B) of this section, if the amount is not tendered within 60 days after the decision becomes final, the license shall automatically be suspended until payment is made to the Customs Service.

(f) REGULATIONS BY THE SECRETARY.—The Secretary may prescribe such rules and regulations relating to the customs business of customs brokers as the Secretary considers necessary to protect importers and the revenue of the United States, and to carry out the provisions of this section, including rules and regulations governing the licensing of or issuance of permits to customs brokers, the keeping of books, accounts, and records by customs brokers, and documents and correspondence, and the furnishing by customs brokers of any other information relating to their customs business to and duly accredited officer or employee of the Customs Service. The Secretary may not prohibit customs brokers from limiting their liability to other persons in the conduct of customs business. For purposes of this subsection or any other provision of this Act pertaining to recordkeeping, all data required to be retained by a customs broker may be kept on microfilm, optical disc, magnetic tapes, disks or drums, video files or any other electrically generated medium. Pursuant to such regulations as the Secretary shall prescribe, the conversion of data to such storage medium may be accomplished at any time subsequent to the relevant customs transaction and the data may be retained in a centralized basis according to such broker's business system.

(g) TRIENNIAL REPORTS BY CUSTOMS BROKERS.—

(1) IN GENERAL.—On February 1, 1985, and on February 1 of each third year thereafter, each person who is licensed under subsection (b) shall file with the Secretary of the Treasury a report as to—

(A) whether such person is actively engaged in business as a customs broker; and

(B) the name under, and the address at, which such business is being transacted.

(2) SUSPENSION AND REVOCATION.—If a person licensed under subsection (b) fails to file the required report by March 1 of the reporting year, the license is suspended, and may be thereafter revoked subject to the following procedures:

(A) The Secretary shall transmit written notice of suspension to the licensee no later than March 31 of the reporting year.

(B) If the licensee files the required report within 60 days of receipt of the Secretary's notice, the license shall be reinstated.

(C) In the event the required report is not filed within the 60-day period, the license shall be revoked without prejudice to the filing of an application for a new license.

(h) FEES AND CHARGES.—The Secretary may prescribe reasonable fees and charges to defray the costs of the Customs Service in carrying out the provisions of this section, including, but not limited to, a fee for licenses issued under subsection (b) and fees for any test administered by him or under his direction; except that no separate fees shall be imposed to defray the costs of an individual audit or of individual disciplinary proceedings of any nature.

[(i) COMPENSATION OF OCEAN FREIGHT FORWARDERS.—

[(1) IN GENERAL.—Notwithstanding any other provision of law, no conference or group of two or more ocean common carriers in the foreign commerce of the United States that is authorized to agree upon the level of compensation paid to ocean freight forwarders may—

[(A) deny to any member of such conference or group the right, upon notice of not more than 10 calendar days, to take independent action on any level of compensation paid to an ocean freight forwarder who is also a customs broker, and

[(B) agree to limit the payment of compensation to an ocean freight forwarder who is also a customs broker to less than 1.25 percent of the aggregate of all rates and charges applicable under the tariff assessed against the cargo on which the forwarding services are provided.

[(2) ADMINISTRATION.—The provisions of this subsection shall be enforced by the agency responsible for administration of the Shipping Act of 1984 (46 U.S.C. 1701, et seq.).

[(3) REMEDIES.—Any person injured by reason of a violation of paragraph (1) may, in addition to any other remedy, file a complaint for reparation as provided in section 11 of the Shipping Act of 1984 (46 U.S.C. 1710), which may be enforced pursuant to section 14 of such Act (46 U.S.C. 1713).

[(4) DEFINITIONS.—For purposes of this subsection, the terms “conference”, “ocean common carrier”, and “ocean freight forwarder” have the respective meaning given to such terms by section 3 of the Shipping Act of 1984 (46 U.S.C. 1702).]

TITLE 28. JUDICIARY AND JUDICIAL PROCEDURE

PART VI. PARTICULAR PROCEEDINGS

CHAPTER 158. ORDERS OF FEDERAL AGENCIES; REVIEW

§ 2341. Definitions

As used in this chapter—

(1) “clerk” means the clerk of the court in which the petition for the review of an order, reviewable under this chapter, is filed;

(2) “petitioner” means the party or parties by whom a petition to review an order, reviewable under this chapter, is filed; and

(3) “agency” means—

(A) the Commission, when the order sought to be reviewed was entered by the Federal Communications Commission, [the Federal Maritime Commission,] or the Atomic Energy Commission, as the case may be;

(B) the Secretary, when the order was entered by the Secretary of Agriculture or the Secretary of Transportation;

(C) the Administration, when the order was entered by the Maritime Administration;

(D) the Secretary, when the order is under section 812 of the Fair Housing Act [42 U.S.C. 3612]; and

(E) the Board, when the order was entered by the [Surface] *Intermodal* Transportation Board.

§ 2342. Jurisdiction of court of appeals

The court of appeals (other than the United States Court of Appeals for the Federal Circuit) has exclusive jurisdiction to enjoin, set aside, suspend (in whole or in part), or to determine the validity of—

(1) all final orders of the Federal Communications Commission made reviewable by section 402(a) of title 47;

(2) all final orders of the Secretary of Agriculture made under chapters 9 and 20A of title 7 [7 U.S.C. 181 et seq. and 501 et seq.], except orders issued under sections 210(e), 217a, and 499g(a) of title 7;

[(3) all rules, regulations, or final orders of—

[(A) the Secretary of Transportation issued pursuant to section 2, 9, 37, or 41 of the Shipping Act, 1916 (46 U.S.C. App. 802, 803, 808, 835, 839[, and 841a]) or pursuant to part B or C of subtitle IV of title 49 [49 U.S.C. 13101 et seq. or 15101 et seq.]; and

[(B) the Federal Maritime Commission issued pursuant to—

[(i) section 19 of the Merchant Marine Act, 1920 (46 U.S.C. App. 876) ;

[(ii) section 14 or 17 of the Shipping Act of 1984 (46 U.S.C. App. 1713 or 1716); or

[(iii) section 2(d) or 3(d) of the Act of November 6, 1966 (46 U.S.C. App. 817d(d) or 817e(d))];

[(iv), (v) [Redesignated]]

(3) *all rules, regulations, or final orders of the Secretary of Transportation issued pursuant to section 2, 9, 37, 41, or 43 of the Shipping Act, 1916 (46 U.S.C. App. 802, 803, 808, 835, 839, or 841a) or pursuant to part B or C of subtitle IV of title 49 (49 U.S.C. 13101 et seq. or 15101 et seq.);*

(4) all final orders of the Atomic Energy Commission made reviewable by section 2239 of title 42;

[(5) all rules, regulations, or final orders of the Surface Transportation Board made reviewable by section 2321 of this title;]

(5) *all rules, regulations, or final orders of the Intermodal Transportation Board—*

(A) *made reviewable by section 2321 of this title; or*

(B) *pursuant to—*

(i) *section 19 of the Merchant Marine Act, 1920 (46 U.S.C. App. 876);*

(ii) *section 14 or 17 of the Shipping Act of 1984 (46 U.S.C. App. 1713 or 1716); or*

(iii) *section 2(d) or 3(d) of the Act of November 6, 1966 (46 U.S.C. App. 817d(d) or 817e(d));*

(6) *all final orders under section 812 of the Fair Housing Act [42 U.S.C. 3612]; and*

(7) *all final agency actions described in section 20114(c) of title 49.*

Jurisdiction is invoked by filing a petition as provided by section 2344 of this title.

TITLE 46—UNITED STATES CODE

* * * * *

CHAPTER 112—MERCHANT MARINER BENEFITS

Sec.

11201. *Qualified service.*

11202. *Documentation of qualified service.*

11203. *Eligibility for certain veterans' benefits.*

11204. *Processing fees.*

§ 11201. *Qualified service*

For purposes of this chapter, a person engaged in qualified service if, between August 16, 1945, and December 31, 1946, the person—

(1) *was a member of the United States merchant marine (including the Army Transport Service and the Naval Transportation Service) serving as a crewmember of a vessel that was—*

(A) *operated by the War Shipping Administration or the Office of Defense Transportation (or an agent of the Administration or Office);*

(B) *operated in waters other than inland waters, the Great Lakes, other lakes, bays, and harbors of the United States;*

(C) *under contract or charter to, or property of, the Government of the United States; and*

(D) *serving the Armed Forces; and*

(2) *while so serving, was licensed or otherwise documented for service as a crewmember of such a vessel by an officer or employee of the United States authorized to license or document the person for such service.*

§ 11202. *Documentation of qualified service*

(a) *RECORD OF SERVICE.—The Secretary shall, upon application—*

(1) *issue a certificate of honorable discharge to a person who, as determined by the Secretary, engaged in qualified service of a nature and duration that warrants issuance of the certificate; and*

(2) *correct, or request the appropriate official of the Federal government to correct, the service records of the person to the extent necessary to reflect the qualified service and the issuance of the certificate of honorable discharge.*

(b) **TIMING OF DOCUMENTATION.**—*The Secretary shall take action on an application under subsection (a) not later than one year after the Secretary receives the application.*

(c) **STANDARDS RELATING TO SERVICE.**—*In making a determination under subsection (a)(1), the Secretary shall apply the same standards relating to the nature and duration of service that apply to the issuance of honorable discharges under section 401(a)(1)(b) of the GI Bill Improvement Act of 1977 (38 U.S.C. 106 note).*

(d) **CORRECTION OF RECORDS.**—*An official of the Federal government who is requested to correct service records under subsection (a)(2) shall do so.*

§ 11203. Eligibility for certain veterans' benefits

(a) **ELIGIBILITY.**—

(1) **IN GENERAL.**—*The qualified service of an individual referred to in paragraph (2) is deemed to be active duty in the armed forces during a period of war for purposes of eligibility for benefits under chapters 23 and 24 of title 38.*

(2) **COVERED INDIVIDUALS.**—*Paragraph (1) applies to an individual who—*

(A) *receives an honorable discharge certificate under section 11202 of this title; and*

(B) *is not eligible under any other provision of law for benefits under laws administered by the Secretary of Veterans Affairs.*

(b) **REIMBURSEMENT FOR BENEFITS PROVIDED.**—*The Secretary shall reimburse the Secretary of Veterans Affairs for the value of benefits that the Secretary of Veterans Affairs provides for an individual by reason of eligibility under this section.*

(c) **PROSPECTIVE APPLICABILITY.**—*An individual is not entitled to receive, and may not receive, benefits under this chapter for any period before the date of enactment of this chapter.*

§ 11204. Processing fees

(a) **COLLECTION OF FEES.**—*The Secretary shall collect a fee of \$30 from each applicant for processing an application submitted under section 11202(a) of this title.*

(b) **TREATMENT OF FEES COLLECTED.**—*Amounts received by the Secretary under this section shall be credited to appropriations available to the secretary for carrying out this chapter.*

Section 2, Public Law 89-777

[46 U.S.C. App. 817d]

§ 817d. Financial responsibility of owners and charterers for death or injury to passengers or other persons

(a) AMOUNT; METHOD OF ESTABLISHMENT.—Each owner or charterer of an American or foreign vessel having berth or state-room accommodations for fifty or more passengers, and embarking passengers at United States ports, shall establish, under regulations prescribed by the [Federal Maritime Commission] *Intermodal Transportation Board*, his financial responsibility to meet any liability he may incur for death or injury to passengers or other persons on voyages to or from United States ports, in an amount based upon the number of passenger accommodations aboard the vessel, calculated as follows: \$20,000 for each passenger accommodation up to and including five hundred; plus \$15,000 for each additional passenger accommodation between five hundred and one and one thousand; plus \$10,000 for each additional passenger accommodation between one thousand and one and one thousand five hundred; plus \$5,000 for each passenger accommodation in excess of one thousand five hundred: *Provided, however,* That if such owner or charterer is operating more than one vessel subject to this section, the foregoing amount shall be based upon the number of passenger accommodations on the vessel being so operated which has the largest number of passenger accommodations. This amount shall be available to pay any judgment for damages, whether an amount less than or more than \$20,000 for death or injury occurring on such voyages to any passenger or other person. Such financial responsibility may be established by any one of, or a combination of, the following methods which is acceptable to the [Commission:] *Board*: (1) policies of insurance, (2) surety bonds, (3) qualifications as a self-insurer, or (4) other evidence of financial responsibility.

(b) ISSUANCE OF BOND WHEN FILED WITH [COMMISSION] *BOARD*.—If a bond is filed with the [Commission,] *Board* then such bond shall be issued by a bonding company authorized to do business in the United States or any State thereof or the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, or any territory or possession of the United States.

(c) CIVIL PENALTIES FOR VIOLATIONS; REMISSION OR MITIGATION OF PENALTIES.—Any person who shall violate this section shall be subject to a civil penalty of not more than \$5,000 in addition to a civil penalty of \$200 for each passage sold, such penalties to be assessed by the [Federal Maritime Commission.] *Intermodal Transportation Board*. These penalties may be remitted or mitigated by the [Federal Maritime Commission] *Intermodal Transportation Board* upon such terms as it in its discretion shall deem proper.

(d) RULES AND REGULATIONS.—The [Federal Maritime Commission] *Intermodal Transportation Board* is authorized to prescribe such regulations as may be necessary to carry out the provisions of this section. The provisions of the Shipping Act of 1984 shall

apply with respect to proceedings conducted by the [Commission] Board under this section.

(e) REFUSAL OF DEPARTURE CLEARANCE.—At the port or place of departure from the United States of any vessel described in subsection (a) of this section, the Customs Service shall refuse the clearance required by section 4197 of the Revised Statutes (46 U.S.C. 91) to any such vessel which does not have evidence furnished by the [Federal Maritime Commission] *Intermodal Transportation Board* that the provisions of this section have been complied with.

Section 3, Public Law 89-777

[46 U.S.C. App. 817e]

§ 817e. Financial responsibility for indemnification of passengers for nonperformance of transportation

(a) FILING OF INFORMATION OR BOND WITH [COMMISSION] Board.—No person in the United States shall arrange, offer, advertise, or provide passage on a vessel having berth or stateroom accommodations for fifty or more passengers and which is to embark passengers at United States ports without there first having been filed with the [Federal Maritime Commission] *Intermodal Transportation Board* such information as the [Commission] Board may deem necessary to establish the financial responsibility of the person arranging, offering, advertising, or providing such transportation, or in lieu thereof a copy of a bond or other security, in such form as the [Commission,] Board, by rule or regulation, may require and accept, for indemnification of passengers for nonperformance of the transportation.

(b) ISSUANCE OF BOND WHEN FILED WITH [COMMISSION;] Board; Amount of Bond.—If a bond is filed with the [Commission,] Board, such bond shall be issued by a bonding company authorized to do business in the United States or any State thereof, or the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands or any territory or possession of the United States.

(c) CIVIL PENALTIES FOR VIOLATIONS; REMISSION OR MITIGATION OF PENALTIES.—Any person who shall violate this section shall be subject to a civil penalty of not more than \$5,000 in addition to a civil penalty of \$200 for each passage sold, such penalties to be assessed by the [Federal Maritime Commission] *Intermodal Transportation Board*. These penalties may be remitted or mitigated by the [Federal Maritime Commission] *Intermodal Transportation Board* upon such terms as it in its discretion shall deem proper.

(d) RULES AND REGULATIONS.—The [Federal Maritime Commission] *Intermodal Transportation Board* is authorized to prescribe such regulations as may be necessary to carry out the provisions of this section. The provisions of the Shipping Act of 1984 shall apply with respect to proceedings conducted by the [Commission] Board under this section.

(e) REFUSAL OF DEPARTURE CLEARANCE.—At the port or place of departure from the United States of any vessel described in subsection (a) of this section, the Customs Service shall refuse the

clearance required by section 4197 of the Revised Statutes (46 U.S.C. 91) [46 U.S.C. Appx. 91] to any such vessel which does not have evidence furnished by the [Federal Maritime Commission] *Intermodal Transportation Board* that the provisions of this section have been complied with.

Section 19, Merchant Marine Act, 1920

[46 U.S.C. App. 876]

§ 876. Power of Secretary and [Commission] *Board* to make rules and regulations

[(1)] (a) The Secretary of Transportation is authorized and directed in aid of the accomplishment of the purposes of this Act—

[(a)] (1) To make all necessary rules and regulations to carry out the provisions of this Act;

And the [Federal Maritime Commission] *Intermodal Transportation Board* is authorized and directed in aid of the accomplishment of the purposes of this Act:

[(b)] (2) To make rules and regulations affecting shipping in the foreign trade not in conflict with law in order to adjust or meet general or special conditions unfavorable to shipping in the foreign trade, whether in any particular trade or upon any particular route or in commerce generally, including intermodal movements, terminal operations, cargo solicitation, [forwarding and] agency services, [non-vessel-operating common carrier operations,] *ocean transportation intermediary services and operations*, and other activities and services integral to transportation systems, and which arise out of or result from foreign laws, rules, or regulations or from competitive [methods or practices] *methods, pricing practices, or other practices* employed by owners, operators, agents, or masters of vessels of a foreign country; and

[(c)] (3) To request the head of any department, board, bureau, or agency of the Government to suspend, modify, or annul rules or regulations which have been established by such department, board, bureau, or agency, or to make new rules or regulations affecting shipping in the foreign trade other than such rules or regulations relating to the Public Health Service, the Consular Service, and the Steamboat Inspection Service.

[(2)] (b) No rule or regulation shall be established by any department, board, bureau, or agency of the Government which affect [affects] shipping in the foreign trade, except rules or regulations affecting the Public Health Service, the Consular Service, and the Steamboat Inspection Service, until such rule or regulation has been submitted to the board for its approval and final action has been taken thereon by the board or the President.

[(3)] (c) Whenever the head of any department, board, bureau, or agency of the Government refuses to suspend, modify, or annul any rule or regulation, or make a new rule or regulation upon request of the board, as provided in [subdivision (c) of paragraph (1)] *subsection (a)(3)* of this section, or objects to the decision of the board in respect to the approval of any rule or regulation, as provided in [paragraph (2)] *subsection (d)* of this section, either the

board or the head of the department, board, bureau, or agency which has established or is attempting to establish the rule or regulation in question may submit the facts to the President, who is hereby authorized to establish or suspend, modify, or annul such rule or regulation.

[(4)] (d) No rule or regulation shall be established which in any manner gives vessels owned by the United States any preference or favor over those vessels documented under the laws of the United States and owned by persons who are citizens of the United States.

[(5)] (e) The [Commission] Board may initiate a rule or regulation under [paragraph (1)(b)] subsection (a)(2) of this section either on its own motion or pursuant to a petition. Any person, including a common carrier, tramp operator, bulk operator, shipper, shippers' association, ocean [freight forwarder,] transportation intermediary, marine terminal operator, or any component of the Government of the United States, may file a petition for relief under [paragraph (1)(b) of this section] that subsection.

[(6)] (f) In furtherance of the purposes of [paragraph (1)(b)] subsection (a)(2) of this section—

[(a)] (1) the [Commission] Board may, by order, require any person (including any common carrier, tramp operator, bulk operator, shipper, shippers' association, ocean [freight forwarder,] transportation intermediary, or marine terminal operator, or an officer, receiver, trustee, lessee, agent, or employee thereof) to file with the [Commission] Board a report, answers to questions, documentary material, or other information which the [Commission] Board considers necessary or appropriate;

[(b)] (2) the [Commission] Board may require a report or answers to questions to be made under oath;

[(c)] (3) the [Commission] Board may prescribe the form and the time for response to a report and answers to questions; and

[(d)] (4) a person who fails to file a report, answer, documentary material, or other information required under this paragraph shall be liable to the United States Government for a civil penalty of not more than \$5,000 for each day that the information is not provided.

[(7)] (g) In proceedings under [paragraph (1)(b)] subsection (a)(2) of this section—

[(a)] (1) the [Commission] Board may authorize a party to use depositions, written interrogatories, and discovery procedures that, to the extent practicable, are in conformity with the rules applicable in civil proceedings in the district courts of the United States;

[(b)] (2) the [Commission] Board may by subpoena compel the attendance of witnesses and production of books, papers, documents, and other evidence;

[(c)] (3) subject to funds being provided by appropriations Acts, witnesses are, unless otherwise prohibited by law, entitled to the same fees and mileage as in the courts of the United States;

[(d)] (4) for failure to supply information ordered to be produced or compelled by subpoena under subdivision (b), the [Commission] Board may—

[(i)] (A) after notice and an opportunity for hearing, suspend [tariffs of a common carrier] *tariffs and service contracts of a common carrier* or that common carrier's right to [use the tariffs of conferences] *use tariffs of conferences and service contracts of agreements* of which it is a member, or

[(ii)] (B) assess a civil penalty of not more than \$5,000 for each day that the information is not provided; and

[(e)] (5) when a person violates an order of the [Commission] Board or fails to comply with a subpoena, the [Commission] Board may seek enforcement by a United States district court having jurisdiction over the parties, and if, after hearing, the court determines that the order was regularly made and duly issued, it shall enforce the order by an appropriate injunction or other process, mandatory or otherwise.

[(8)] (h) Notwithstanding any other law, the [Commission] Board may refuse to disclose to the public a response or other information provided under the terms of this section.

[(9)] (i) If the [Commission] Board finds that conditions that are unfavorable to shipping under [paragraph (1)(b)] subsection (a)(2) of this section exist, the [Commission] Board may—

[(a)] (1) limit sailings to and from United States ports or the amount or type of cargo carried;

[(b)] (2) suspend, in whole or in part, [tariffs filed with the [Commission] Board] *tariffs and service contracts* for carriage to or from United States ports, including a common carrier's right to [use the tariffs of conferences] *use tariffs of conferences and service contracts of agreements* in United States trades of which it is a member for any period the [Commission] Board specifies;

[(c)] (3) suspend, in whole or in part, an ocean common carrier's right to operate under an agreement filed with the [Commission] Board, including any agreement authorizing preferential treatment at terminals, preferential terminal leases, space chartering, or pooling of cargoes or revenue with other ocean common carriers;

[(d)] (4) impose a fee, not to exceed \$1,000,000 per voyage; or

[(e)] (5) take any other action the [Commission] Board finds necessary and appropriate to adjust or meet any condition unfavorable to shipping in the foreign trade of the United States.

[(10)] (j) Upon request by the [Commission] Board—

[(a)] (1) the collector of customs at the port or place of destination in the United States shall refuse the clearance required by section 4197 of the Revised Statutes (46 App. U.S.C. 91) to a vessel of a country that is named in a rule or regulation issued by the [Commission] Board under [paragraph (1)(b)] subsection (a)(2) of this section, and shall collect any fees imposed by the [Commission] Board under [paragraph (9)(d)] subsection (i)(4) of this section; and

[(b)] (2) the Secretary of the department in which the Coast Guard is operating shall deny entry for purpose of oceanborne trade, of a vessel of a country that is named in a rule or regulation issued by the [Commission] *Board* under [paragraph (1)(b)] *subsection (a)(2)* of this section, to any port or place in the United States or the navigable waters of the United States, or shall detain that vessel at the port or place in the United States from which it is about to depart for another port or place in the United States.

[(11)] (k) A common carrier that accepts or handles cargo for carriage under a [tariff] *tariff or service contract* that has been suspended under [paragraph (7) (d) or (9) (b)] SUBSECTION (G)(4) OR (I)(2) of this section, or after its right to use another [tariff] *tariff or service contract* has been suspended under those [paragraphs,] *subsections* is subject to a civil penalty of not more than \$50,000 for each day that it is found to be operating under a suspended [tariff] *tariff or service contract*.

[(12)] (l) The [Commission] *Board* may consult with, seek the cooperation of, or make recommendations to other appropriate Government agencies prior to taking any action under this section.

Section 2, Shipping Act of 1984

[46 U.S.C. App. 1701]

§ 1701. Declaration of policy

The purposes of this Act are—

(1) to establish a nondiscriminatory regulatory process for the common carriage of goods by water in the foreign commerce of the United States with a minimum of government intervention and regulatory costs;

(2) to provide an efficient and economic transportation system in the ocean commerce of the United States that is, insofar as possible, in harmony with, and responsive to, international shipping practices; [and]

(3) to encourage the development of an economically sound and efficient United States-flag liner fleet capable of meeting national security [needs.] *needs; and*

(4) *to promote the growth and development of United States exports through competitive and efficient ocean transportation and by placing a greater reliance on the marketplace.*

Section 3, Shipping Act of 1984

[46 U.S.C. App. 1702]

§ 1702. Definitions

As used in this Act—

(1) “agreement” means an understanding, arrangement, or association (written or oral) and any modification or cancellation thereof; but the term does not include a maritime labor agreement.

(2) “antitrust laws” means the Act of July 2, 1890 (ch. 647, 26 Stat. 209), as amended; the Act of October 15, 1914 (ch. 323, 38 Stat. 730), as amended; the Federal Trade Commission Act (38 Stat. 717) [15 U.S.C. 41 et seq.], as amended; sections 73 and 74 of the Act of August 27, 1894 (28 Stat. 570) [15 U.S.C. 8, 9], as amended; the Act of June 19, 1936 (ch. 592, 49 Stat. 1526), as amended; the Antitrust Civil Process Act (76 Stat. 548) [15 U.S.C. 1311 et seq.], as amended; and amendments and Acts supplementary thereto.

(3) “assessment agreement” means an agreement, whether part of a collective-bargaining agreement or negotiated separately, to the extent that it provides for the funding of collectively bargained fringe benefit obligations on other than a uniform man-hour basis, regardless of the cargo handled or type of vessel or equipment utilized.

(4) “Board” means the *Intermodal Transportation Board*.

[(4)] (5) “bulk cargo” means cargo that is loaded and carried in bulk without mark or count.

[(5) “Commission” means the Federal Maritime Commission.]

(6) “common carrier” means a person holding itself out to the general public to provide transportation by water of passengers or cargo between the United States and a foreign country for compensation that—

(A) assumes responsibility for the transportation from the port or point of receipt to the port or point of destination, and

(B) utilizes, for all or part of that transportation, a vessel operating on the high seas or the Great Lakes between a port in the United States and a port in a foreign country, except that the term does not include a common carrier engaged in ocean transportation by ferry boat, ocean tramp, or chemical parcel-tanker. As used in this paragraph, “chemical parcel-tanker” means a vessel whose cargo-carrying capability consists of individual cargo tanks for bulk chemicals that are a permanent part of the vessel, that have segregation capability with piping systems to permit simultaneous carriage of several bulk chemical cargoes with minimum risk of cross-contamination, and that has a valid certificate of fitness under the International Maritime Organization Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk.

(7) “conference” means an association of ocean common carriers permitted, pursuant to an approved or effective agreement, to engage in concerted activity and to utilize a common tariff; but the term does not include a joint service, consortium, pooling, sailing, or transshipment arrangement.

(8) “controlled carrier” means an ocean common carrier that is, or whose operating assets are, directly or indirectly, owned or controlled by [the government under whose registry the vessels of the carrier operate;] *a government*; ownership or control by a government shall be deemed to exist with respect to any carrier if—

(A) a majority portion of the interest in the carrier is owned or controlled in any manner by that government, by any agency thereof, or by any public or private person controlled by that government; or

(B) that government has the right to appoint or disapprove the appointment of a majority of the directors, the chief operating officer, or the chief executive officer of the carrier.

[(9) “deferred rebate” means a return by a common carrier of any portion of the freight money to a shipper as a consideration for that shipper giving all, or any portion, of its shipments to that or any other common carrier, or for any other purpose, the payment of which is deferred beyond the completion of the service for which it is paid, and is made only if, during both the period for which computed and the period of deferment, the shipper has complied with the terms of the rebate agreement or arrangement.]

(9) *“deferred rebate” means a return by a common carrier of any portion of freight money to a shipper as a consideration for that shipper giving all, or any portion, of its shipments to that or any other common carrier over a fixed period of time, the payment of which is deferred beyond the completion of service for which it is paid, and is made only if the shipper has agreed to make a further shipment or shipments with that or any other common carrier.*

[(10) “fighting ship” means a vessel used in a particular trade by an ocean common carrier or group of such carriers for the purpose of excluding, preventing, or reducing competition by driving another ocean common carrier out of that trade.]

[(11)] (10) “forest products” means forest products [in an unfinished or semifinished state that require special handling moving in lot sizes too large for a container,] including, but not limited to lumber in bundles, rough timber, ties, poles, piling, laminated beams, bundled siding, bundled plywood, bundled core stock or veneers, bundled particle or fiber boards, bundled hardwood, wood pulp in rolls, wood pulp in unitized bales, [paper board in rolls, and paper in rolls.] *paper and paper board in rolls or in pallet or skid-sized sheets.*

[(12)] (11) “inland division” means the amount paid by a common carrier to an inland carrier for the inland portion of through transportation offered to the public by the common carrier.

[(13)] (12) “inland portion” means the charge to the public by a common carrier for the nonocean portion of through transportation.

[(14)] (13) “loyalty contract” means a contract with an ocean common carrier or [conference, other than a service contract or contract based upon time-volume rates,] *agreement* by which a shipper obtains lower rates by committing all or a fixed portion of its cargo to that carrier or [conference.] *agreement and the contract provides for a deferred rebate arrangement.*

[(15)] (14) “marine terminal operator” means a person engaged in the United States in the business of furnishing wharfage, dock, warehouse, or other terminal facilities in connection

with a common **【carrier.】** *carrier, or in connection with a common carrier and a water carrier subject to subchapter II of chapter 135 of title 49, United States Code.*

【(16)】 (15) “maritime labor agreement” means a collective-bargaining agreement between an employer subject to this Act, or group of such employers, and a labor organization representing employees in the maritime or stevedoring industry, or an agreement preparatory to such a collective-bargaining agreement among members of a multiemployer bargaining group, or an agreement specifically implementing provisions of such a collective-bargaining agreement or providing for the formation, financing, or administration of a multiemployer bargaining group; but the term does not include an assessment agreement.

【(17) “non-vessel-operating common carrier” means a common carrier that does not operate the vessels by which the ocean transportation is provided, and is a shipper in its relationship with an ocean common carrier.**】**

【(18)】 (16) “ocean common carrier” means a vessel-operating common carrier.

【(19) “ocean freight forwarder” means a person in the United States that—

【(A) dispatches shipments from the United States via common carriers and books or otherwise arranges space for those shipments on behalf of shippers; and

【(B) processes the documentation or performs related activities incident to those shipments.**】**

(17) “ocean transportation intermediary” means an ocean freight forwarder or a non-vessel-operating common carrier. For purposes of this paragraph, the term

(A) “ocean freight forwarder” means a person that—

(i) in the United States, dispatches shipments from the United States via a common carrier and books or otherwise arranges space for those shipments on behalf of shippers; and

(ii) processes the documentation or performs related activities incident to those shipments; and

(B) “non-vessel-operating common carrier” means a common carrier that does not operate the vessels by which the ocean transportation is provided, and is a shipper in its relationship with an ocean common carrier.

【(20)】 (18) “person” includes individuals, corporations, partnerships, and associations existing under or authorized by the laws of the United States or of a foreign country.

【(21) “service contract” means a contract between a shipper and an ocean common carrier or conference in which the shipper makes a commitment to provide a certain minimum quantity of cargo over a fixed time period, and the ocean common carrier or conference commits to a certain rate or rate schedule as well as a defined service level—such as, assured space, transit time, port rotation, or similar service features; the contract may also specify provisions in the event of nonperformance on the part of either party.**】**

(19) “service contract” means a written contract, other than a bill of lading or a receipt, between one or more shippers and an

individual common carrier or an agreement between or among ocean common carriers in which the shipper or shippers makes a commitment to provide a certain volume or portion of cargo over a fixed time period, and the common carrier or the agreement commits to a certain rate or rate schedule and a defined service level, such as assured space, transit time, port rotation, or similar service features. The contract may also specify provisions in the event of nonperformance on the part of any party.

[(22)] (20) “shipment” means all of the cargo carried under the terms of a single bill of lading.

[(23)] “shipper” means an owner or person for whose account the ocean transportation of cargo is provided or the person to whom delivery is to be made.】

(21) “shipper” means—

(A) a cargo owner;

(B) the person for whose account the ocean transportation is provided;

(C) the person to whom delivery is to be made;

(D) a shippers’ association; or

(E) an ocean transportation intermediary, as defined in paragraph (17)(B) of this section, that accepts responsibility for payment of all charges applicable under the tariff or service contract.

[(24)] (22) “shippers’ association” means a group of shippers that consolidates or distributes freight on a nonprofit basis for the members of the group in order to secure carload, truckload, or other volume rates or service contracts.

[(25)] (23) “through rate” means the single amount charged by a common carrier in connection with through transportation.

[(26)] (24) “through transportation” means continuous transportation between origin and destination for which a through rate is assessed and which is offered or performed by one or more carriers, at least one of which is a common carrier, between a United States point or port and a foreign point or port.

[(27)] (25) “United States” includes the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Marianas, and all other United States territories and possessions.

Section 4, Shipping Act of 1984

[46 U.S.C. App. 1703]

§ 1703. Agreements within scope of [the Act] 46 U.S.C. App. 1701 et seq.

(a) OCEAN COMMON CARRIERS.—This Act applies to agreements by or among ocean common carriers to—

(1) discuss, fix, or regulate transportation rates, including through rates, cargo space accommodations, and other conditions of service;

(2) pool or apportion traffic, revenues, earnings, or losses;

(3) allot ports or restrict or otherwise regulate the number and character of sailings between ports;

(4) limit or regulate the volume or character of cargo or passenger traffic to be carried;

(5) engage in exclusive, preferential, or cooperative working arrangements among themselves or with one or more marine terminal ~~operators or non-vessel-operating common carriers;~~
operators;

(6) control, regulate, or prevent competition in international ocean transportation; ~~and~~ *or*

(7) regulate or prohibit their use of service contracts.

(b) MARINE TERMINAL OPERATORS.—This Act applies to agreements ~~[(to the extent the agreements involve ocean transportation in the foreign commerce of the United States)]~~ among marine terminal operators and among one or more marine terminal operators and one or more ocean common carriers to—

(1) discuss, fix, or regulate rates or other conditions of service; and

(2) engage in exclusive, preferential, or cooperative working ~~arrangements.] arrangements, to the extent that such agreements involve ocean transportation in the foreign commerce of the United States.~~

(c) ACQUISITIONS.—This Act does not apply to an acquisition by any person, directly or indirectly, of any voting security or assets of any other person.

Section 5, Shipping Act of 1984

[46 U.S.C. App. 1704]

§ 1704. Agreements

(a) FILING REQUIREMENTS.—A true copy of every agreement entered into with respect to an activity described in section 4 (a) or (b) of this Act [46 U.S.C. App. 1703 (a) or (b)] shall be filed with the ~~Commission~~ *Board*, except agreements related to transportation to be performed within or between foreign countries and agreements among common carriers to establish, operate, or maintain a marine terminal in the United States. In the case of an oral agreement, a complete memorandum specifying in detail the substance of the agreement shall be filed. The ~~Commission~~ *Board* may by regulation prescribe the form and manner in which an agreement shall be filed and the additional information and documents necessary to evaluate the agreement.

(b) CONFERENCE AGREEMENTS.—Each conference agreement must—

(1) state its purpose;

(2) provide reasonable and equal terms and conditions for admission and readmission to conference membership for any ocean common carrier willing to serve the particular trade or route;

(3) permit any member to withdraw from conference membership upon reasonable notice without penalty;

(4) at the request of any member, require an independent neutral body to police fully the obligations of the conference and its members;

(5) prohibit the conference from engaging in conduct prohibited by section 10(c) (1) or (3) of this Act [46 U.S.C. App. 1709(c) (1), (3)];

(6) provide for a consultation process designed to promote—

(A) commercial resolution of disputes, and

(B) cooperation with shippers in preventing and eliminating malpractices;

(7) establish procedures for promptly and fairly considering shippers' requests and complaints; [and]

[(8) provide that any member of the conference may take independent action on any rate or service item required to be filed in a tariff under section 8(a) of this Act [46 U.S.C. App. 1707(a)] upon not more than 10 calendar days' notice to the conference and that the conference will include the new rate or service item in its tariff for use by that member, effective no later than 10 calendar days after receipt of the notice, and by any other member that notifies the conference that it elects to adopt the independent rate or service item on or after its effective date, in lieu of the existing conference tariff provision for that rate or service item.]

(8) provide that any member of the conference may take independent action on any rate or service item upon not more than 5 calendar days' notice to the conference and that, except for exempt commodities not published in the conference tariff, the conference will include the new rate or service item in its tariff for use by that member, effective no later than 5 calendar days after receipt of the notice, and by any other member that notifies the conference that it elects to adopt the independent rate or service item on or after its effective date, in lieu of the existing conference tariff provision for that rate or service item; and

(9) prohibit the agreement from—

(A) prohibiting or restricting the members of the agreement from engaging in negotiations for service contracts with 1 or more shippers;

(B) requiring a member of the agreement to disclose a negotiation on a service contract, or the terms and conditions of a service contract, other than those specified by section 8(c)(3) of this Act; and

(C) issuing mandatory rules or requirements affecting an agreement member's right to negotiate and enter into service contracts.

An agreement may issue voluntary guidelines relating to the terms and procedures of agreement members' service contracts if the guidelines explicitly state the right of members of the agreement not to follow the guidelines and the guidelines are filed with the agreement.

(c) INTERCONFERENCE AGREEMENTS.—Each agreement between carriers not members of the same conference must provide the right of independent action for each carrier. Each agreement between conferences must provide the right of independent action for each conference.

(d) **ASSESSMENT AGREEMENTS.**—Assessment agreements shall be filed with the **【Commission】 Board** and become effective on filing. The **【Commission】 Board** shall thereafter, upon complaint filed within 2 years of the date of the agreement, disapprove, cancel, or modify any such agreement, or charge or assessment pursuant thereto, that it finds, after notice and hearing, to be unjustly discriminatory or unfair as between carriers, shippers, or ports. The **【Commission】 Board** shall issue its final decision in any such proceeding within 1 year of the date of filing of the complaint. To the extent that an assessment or charge is found in the proceeding to be unjustly discriminatory or unfair as between carriers, shippers, or ports, the **【Commission】 Board** shall remedy the unjust discrimination or unfairness for the period of time between the filing of the complaint and the final decision by means of assessment adjustments. These adjustments shall be implemented by prospective credits or debits to future assessments or charges, except in the case of a complainant who has ceased activities subject to the assessment or charge, in which case reparation may be awarded. Except for this subsection and section 7(a) of this Act [46 U.S.C. App. 1706(a)], **【this Act, the Shipping Act, 1916, and the Intercoastal Shipping Act, 1933,】 this Act and the Shipping Act, 1916** do not apply to assessment agreements.

(e) **MARITIME LABOR AGREEMENTS.**—This Act and the Shipping Act, 1916 do not apply to maritime labor agreements. This subsection does not exempt from this Act or the Shipping Act, 1916 any rates, charges, regulations, or practices of a common carrier that are required to be set forth in a tariff, whether or not those rates, charges, regulations, or practices arise out of, or are otherwise related to, a maritime labor agreement.

Section 6, Shipping Act of 1984

[46 U.S.C. App. 1705]

§ 1705. Action on agreements

(a) **NOTICE.**—Within 7 days after an agreement is filed, the **【Commission】 Board** shall transmit a notice of its filing to the Federal Register for publication.

(b) **REVIEW STANDARD.**—The **【Commission】 Board** shall reject any agreement filed under section 5(a) of this Act [46 U.S.C. App. 1704(a)] that, after preliminary review, it finds does not meet the requirements of section 5 [46 U.S.C. App. 1704]. The **【Commission】 Board** shall notify in writing the person filing the agreement of the reason for rejection of the agreement.

(c) **REVIEW AND EFFECTIVE DATE.**—Unless rejected by the **【Commission】 Board** under subsection (b), agreements, other than assessment agreements, shall become effective—

(1) on the 45th day after filing, or on the 30th day after notice of the filing is published in the Federal Register, whichever day is later; or

(2) if additional information or documentary material is requested under subsection (d), on the 45th day after the **【Commission】 Board** receives—

(A) all the additional information and documentary material requested; or

(B) if the request is not fully complied with, the information and documentary material submitted and a statement of the reasons for noncompliance with the request. The period specified in paragraph (2) may be extended only by the United States District Court for the District of Columbia upon an application of the **【Commission】 Board** under subsection (i).

(d) **ADDITIONAL INFORMATION.**—Before the expiration of the period specified in subsection (c) (1) , the **【Commission】 Board** may request from the person filing the agreement any additional information and documentary material it deems necessary to make the determinations required by this section.

(e) **REQUEST FOR EXPEDITED APPROVAL.**—The **【Commission】 Board** may, upon request of the filing party, shorten the review period specified in subsection (c) , but in no event to a date less than 14 days after notice of the filing of the agreement is published in the Federal Register.

(f) **TERM OF AGREEMENTS.**—The **【Commission】 Board** may not limit the effectiveness of an agreement to a fixed term.

(g) **SUBSTANTIALLY ANTICOMPETITIVE AGREEMENTS.**—If, at any time after the filing or effective date of an agreement, the **【Commission】 Board** determines that the agreement is likely, by a reduction in competition, to produce an unreasonable reduction in transportation service or an unreasonable increase in transportation cost, it may, after notice to the person filing the agreement, seek appropriate injunctive relief under subsection (h) .

(h) **INJUNCTIVE RELIEF.**—The **【Commission】 Board** may, upon making the determination specified in subsection (g) , bring suit in the United States District Court for the District of Columbia to enjoin operation of the agreement. The court may issue a temporary restraining order or preliminary injunction and, upon a showing that the agreement is likely, by a reduction in competition, to produce an unreasonable reduction in transportation service or an unreasonable increase in transportation cost, may enter a permanent injunction. In a suit under this subsection, the burden of proof is on the **【Commission】 Board**. The court may not allow a third party to intervene with respect to a claim under this subsection.

(i) **COMPLIANCE WITH INFORMATIONAL NEEDS.**—If a person filing an agreement, or an officer, director, partner, agent, or employee thereof, fails substantially to comply with a request for the submission of additional information or documentary material within the period specified in subsection (c), the United States District Court for the District of Columbia, at the request of the **【Commission】 Board**—

(1) may order compliance;

(2) shall extend the period specified in subsection (c)(2) until there has been substantial compliance; and

(3) may grant such other equitable relief as the court in its discretion determines necessary or appropriate.

(j) **NONDISCLOSURE OF SUBMITTED MATERIAL.**—Except for an agreement filed under section 5 of this Act [46 U.S.C. App. 1704], information and documentary material filed with the **【Commis-**

sion] *Board* under section 5 or 6 [46 U.S.C. App. 1704 and this section] is exempt from disclosure under section 552 of title 5, United States Code [5 U.S.C. 552] and may not be made public except as may be relevant to an administrative or judicial action or proceeding. This section does not prevent disclosure to either body of Congress or to a duly authorized committee or subcommittee of Congress.

(k) REPRESENTATION.—Upon notice to the Attorney General, the [Commission] *Board* may represent itself in district court proceedings under subsections (h) and (i) of this section and section 11(h) of this Act [46 U.S.C. App. 1710(h)]. With the approval of the Attorney General, the [Commission] *Board* may represent itself in proceedings in the United States Courts of Appeal under subsections (h) and (i) of this section and section 11(h) of this Act [46 U.S.C. App. 1710(h)].

Section 7, Shipping Act of 1984

[46 U.S.C. App. 1706]

§ 1706. Exemption from antitrust laws

(a) IN GENERAL.—The antitrust laws do not apply to—

(1) any agreement that has been filed under section 5 of this Act [46 U.S.C. App. 1704] and is effective under section 5(d) or section 6 [46 U.S.C. App. 1704(d) , 1705], or is exempt under section 16 of this Act [46 U.S.C. App. 1715] from any requirement of this Act;

(2) any activity or agreement within the scope of this Act, whether permitted under or prohibited by this Act, undertaken or entered into with a reasonable basis to conclude that (A) it is pursuant to an agreement on file with the [Commission] *Board* and in effect when the activity took place, or (B) it is exempt under section 16 of this Act [46 U.S.C. App. 1715] from any filing or publication requirement of this Act;

(3) any agreement or activity that relates to transportation services within or between foreign countries, whether or not via the United States, unless that agreement or activity has a direct, substantial, and reasonably foreseeable effect on the commerce of the United States;

(4) any agreement or activity concerning the foreign inland segment of through transportation that is part of transportation provided in a United States import or export trade;

(5) any agreement or activity to provide or furnish wharfage, dock, warehouse, or other terminal facilities outside the United States; or

(6) subject to section 20(e)(2) of this Act [46 U.S.C. App. 1719(e)(2)], any agreement, modification, or cancellation approved by the *Federal Maritime Commission* before the effective date of this Act under section 15 of the Shipping Act, 1916 [46 U.S.C. App. 814], or permitted under section 14b thereof, and any properly published tariff, rate, fare, or charge, classification, rule, or regulation explanatory thereof implementing that agreement, modification, or cancellation.

(b) EXCEPTIONS.—This Act does not extend antitrust immunity—

(1) to any agreement with or among air carriers, rail carriers, motor carriers, or common carriers by water not subject to this Act with respect to transportation within the United States;

(2) to any discussion or agreement among common carriers that are subject to this Act regarding the inland divisions (as opposed to the inland portions) of through rates within the United States; **[or]**

(3) to any agreement among common carriers subject to this Act to establish, operate, or maintain a marine terminal in the United **[States.] States; or**

(4) to any loyalty contract.

(c) LIMITATIONS.—

(1) Any determination by an agency or court that results in the denial or removal of the immunity to the antitrust laws set forth in subsection (a) shall not remove or alter the antitrust immunity for the period before the determination.

(2) No person may recover damages under section 4 of the Clayton Act (15 U.S.C. 15) [15 U.S.C. 15], or obtain injunctive relief under section 16 of that Act (15 U.S.C. 26) [15 U.S.C. 26], for conduct prohibited by this Act.

Section 8, Shipping Act of 1984

[46 U.S.C. App. 1707]

§ 1707. Tariffs

(a) IN GENERAL.—

(1) Except with regard to bulk cargo, forest products, recycled metal scrap, *new assembled motor vehicles*, waste paper, and paper waste, each common carrier and conference shall **[file with the Commission, and]** keep open to public **[inspection,]** *inspection in an automated tariff system*, tariffs showing all its rates, charges, classifications, rules, and practices between all points or ports on its own route and on any through transportation route that has been established. However, common carriers shall not be required to state separately or otherwise reveal in **[tariff filings]** *tariffs* the inland divisions of a through rate. Tariffs shall—

(A) state the places between which cargo will be carried;

(B) list each classification of cargo in use;

(C) state the level of ocean freight forwarder compensation, if any, by a carrier or conference;

(D) state separately each terminal or other charge, privilege, or facility under the control of the carrier or conference and any rules or regulations that in any way change, affect, or determine any part or the aggregate of the rates or charges; **[and]**

(E) include sample copies of any **[loyalty contract,]** bill of lading, contract of affreightment, or other document evidencing the transportation **[agreement.] agreement; and**

(F) include copies of any loyalty contract, omitting the shipper's name.

[(2) Copies of tariffs shall be made available to any person, and a reasonable charge may be assessed for them.]

(2) Tariffs shall be made available electronically to any person, without time, quantity, or other limitation, through appropriate access from remote locations, and a reasonable charge may be assessed for such access. No charge may be assessed a Federal agency for such access.

(b) TIME-VOLUME RATES.—Rates shown in tariffs filed under subsection (a) may vary with the volume of cargo offered over a specified period of time.

[(c) SERVICE CONTRACTS.—An ocean common carrier or conference may enter into a service contract with a shipper or shippers' association subject to the requirements of this Act. Except for service contracts dealing with bulk cargo, forest products, recycled metal scrap, waste paper, or paper waste, each contract entered into under this subsection shall be filed confidentially with the Commission, and at the same time, a concise statement of its essential terms shall be filed with the Commission and made available to the general public in tariff format, and those essential terms shall be available to all shippers similarly situated. The essential terms shall include—

[(1) the origin and destination port ranges in the case of port-to-port movements, and the origin and destination geographic areas in the case of through intermodal movements;

[(2) the commodity or commodities involved;

[(3) the minimum volume;

[(4) the line-haul rate;

[(5) the duration;

[(6) service commitments; and

[(7) the liquidated damages for nonperformance, if any.

[The exclusive remedy for a breach of a contract entered into under this subsection shall be an action in an appropriate court, unless the parties otherwise agree.]

(c) SERVICE CONTRACTS.—

(1) IN GENERAL.—*An individual common carrier or an agreement between or among ocean common carriers may enter into a service contract with one or more shippers subject to the requirements of this Act. The exclusive remedy for a breach of a contract entered into under this subsection shall be an action in an appropriate court, unless the parties otherwise agree. In no case may the contract dispute resolution forum be affiliated with, or controlled by, any party to the contract.*

(2) FILING REQUIREMENTS.—*Except for service contracts dealing with bulk cargo, forest products, recycled metal scrap, new assembled motor vehicles, waste paper, or paper waste, each contract entered into under this subsection by an individual common carrier or an agreement shall be filed confidentially with the [Commission] Board. Each service contract shall include the following essential terms—*

(A) the origin and destination port ranges;

(B) the origin and destination geographic areas, in the case of through inter modal movements;

(C) the commodity or commodities involved;

(D) the minimum volume or portion;

(E) the line-haul rate;

(F) the duration;

(G) service commitments; and

(H) the liquidated damages for nonperformance, if any.

(3) **PUBLICATION OF CERTAIN ESSENTIAL TERMS.**—When a service contract is filed confidentially with the **【Commission】** Board, a concise statement of the terms described in paragraphs (2)(C), (D), and (F) and the United States port range shall be published and made available to the public in tariff format.

(4) **DISCLOSURE OF CERTAIN UNPUBLISHED TERMS.**—A party to a collective-bargaining agreement may petition the **【Commission】** Board for the disclosure of any service contract terms not required to be published by paragraph (3) which that party considers to be in violation of that agreement. The petition shall include evidence demonstrating that

(A) a specific ocean common carrier is a party to a collective-bargaining agreement with the petitioner;

(B) the ocean common carrier may be violating the terms and conditions of that agreement; and

(C) the alleged violation involves the moment of cargo subject to this Act.

(5) **ACTION BY 【Commission】 Board.**—The **【Commission】** Board, after reviewing a petition under paragraph (4), the evidence provided with the petition, and the filed service contracts of the carrier named in the petition, may disclose to the petitioner only such unpublished terms of that carrier's service contracts that the **【Commission】** Board reasonably believes may constitute a violation of the collective-bargaining agreement. The **【Commission】** Board may not disclose any unpublished service contract terms with respect to a collective-bargaining agreement term or condition determined by the **【Commission】** Board to be in violation of this Act.

(d) **RATES.**—No new or initial rate or change in an existing rate that results in an increased cost to the shipper may become effective earlier than **【30 days after filing with the Commission.】 30 calendar days after publication.** The **【Commission】** Board, for good cause, may allow such a new or initial rate or change to become effective in less than 30 calendar days. A change in an existing rate that results in a decreased cost to the shipper may become effective upon **【publication and filing with the Commission.】 publication.**

【(e) REFUNDS.—The Commission may, upon application of a carrier or shipper, permit a common carrier or conference to refund a portion of freight charges collected from a shipper or to waive the collection of a portion of the charges from a shipper if—

【(1) there is an error in a tariff of a clerical or administrative nature or an error due to inadvertence in failing to file a new tariff and the refund will not result in discrimination among shippers, ports, or carriers;

【(2) the common carrier or conference has, prior to filing an application for authority to make a refund, filed a new tariff with the Board that sets forth the rate on which the refund or waiver would be based;

[(3) the common carrier or conference agrees that if permission is granted by the Commission, an appropriate notice will be published in the tariff, or such other steps taken as the Commission may require that give notice of the rate on which the refund or waiver would be based, and additional refunds or waivers as appropriate shall be made with respect to other shipments in the manner prescribed by the Commission in its order approving the application; and

[(4) the application for refund or waiver is filed with the Commission within 180 days from the date of shipment.】

(e) *MARINE TERMINAL OPERATOR SCHEDULES.*—*A marine terminal operator may make available to the public, subject to section 10(d) of this Act, a schedule of rates, regulations, and practices pertaining to receiving, delivering, handling, or storing property at its marine terminal. Any such schedule made available to the public shall be enforceable by an appropriate court as an implied contract without proof of actual knowledge of its provisions.*

[(f) FORM.—The Commission may by regulation prescribe the form and manner in which the tariffs required by this section shall be published and filed. The Commission may reject a tariff that is not filed in conformity with this section and its regulations. Upon rejection by the Commission, the tariff is void and its use is unlawful.】

(f) *REGULATIONS.*—*The 【Commission】 Board shall by regulation prescribe the requirements for the accessibility and accuracy of automated tariff systems established under this section. The 【Commission】 Board may, after periodic review, prohibit the use of any automated tariff system that fails to meet therequirements established under this section. The 【Commission】 Board may not require a common carrier to provide a remote terminal for access under subsection (a) (2) . The 【Commission】 Board shall by regulation prescribe the form and manner in which marine terminal operator schedules authorized by this section shall be published.*

Section 502, High Seas Driftnet Fisheries Enforcement Act

【§ 1707a. Automated tariff filing and information system

[(a) DEFINITIONS.—In this section, the following definitions apply:

[(1) Commission. The term “Commission” means the Federal Maritime Commission.

[(2) COMMON CARRIER.—The term “common carrier” means a common carrier under section 3 of the Shipping Act of 1984 (46 App. U.S.C. 1702), a common carrier by water in interstate commerce under the Shipping Act, 1916 (46 App. U.S.C. 801 et seq.), or a common carrier by water in intercoastal commerce under the Intercoastal Shipping Act, 1933 (46 App. U.S.C. 843 et seq.).

[(3) CONFERENCE.—The term “conference” has the meaning given that term under section 3 of the Shipping Act of 1984 (46 App. U.S.C. 1702).

[(4) **ESSENTIAL TERMS OF SERVICE CONTRACTS.**—The term “essential terms of service contracts” means the essential terms that are required to be filed with the Commission and made available under section 8(c) of the Shipping Act of 1984 (46 App. U.S.C. 1707(c)).

[(5) **TARIFF.**—The term “tariff” means a tariff of rates, charges, classifications, rules, and practices required to be filed by a common carrier or conference under section 8 of the Shipping Act of 1984 (46 App. U.S.C. 1707), or a rate, fare, charge, classification, rule, or regulation required to be filed by a common carrier or conference under the Shipping Act, 1916 (46 U.S.C. 801 et seq.), or the Intercoastal Shipping Act, 1933 (46 App. U.S.C. 843 et seq.).

[(b) **TARIFF FORM AND AVAILABILITY.**—

[(1) **Requirement to file.** Notwithstanding any other law, each common carrier and conference shall, in accordance with subsection (c), file electronically with the Commission all tariffs, and all essential terms of service contracts, required to be filed by that common carrier or conference under the Shipping Act of 1984 (46 App. U.S.C. 1701 et seq.), the Shipping Act, 1916 (46 App. U.S.C. 801 et seq.), and the Intercoastal Shipping Act, 1933 (46 App. U.S.C. 843 et seq.).

[(2) **Availability of information.** The Commission shall make available electronically to any person, without time, quantity, or other limitation, both at the Commission headquarters and through appropriate access from remote terminals—

[(A) all tariff information, and all essential terms of service contracts, filed in the Commission’s Automated Tariff Filing and Information System database; and

[(B) all tariff information in the System enhanced electronically by the Commission at any time.

[(c) **FILING SCHEDULE.**—New tariffs and new essential terms of service contracts shall be filed electronically not later than July 1, 1992. All other tariffs, amendments to tariffs, and essential terms of service contracts shall be filed not later than September 1, 1992.

[(d) **FEEs.**—

[(1) **Amount of fee.** The Commission shall charge, beginning July 1 of fiscal year 1992 and in fiscal years 1993, 1994, and 1995—

[(A) a fee of 46 cents for each minute of remote computer access by any individual of the information available electronically under this section; and

[(B) (i) for electronic copies of the Automated Tariff Filing and Information System database (in bulk), or any portion of the database, a fee reflecting the cost of providing those copies, including the cost of duplication, distribution, and user-dedicated equipment; and

[(ii) for a person operating or maintaining information in a database that has multiple tariff or service contract information obtained directly or indirectly from the Commission, a fee of 46 cents for each minute that database is subsequently accessed by computer by any individual.

[(2) **Exemption for Federal agencies.** A Federal agency is exempt from paying a fee under this subsection.

[(e) ENFORCEMENT.—The Commission shall use systems controls or other appropriate methods to enforce subsection (d).

[(f) PENALTIES.—

[(1) Civil penalties. A person failing to pay a fee established under subsection (d) is liable to the United States Government for a civil penalty of not more than \$5,000 for each violation.

[(2) Criminal penalties. A person that willfully fails to pay a fee established under subsection (d) commits a class A misdemeanor.

[(g) AUTOMATIC FILING IMPLEMENTATION.—

[(1) CERTIFICATION OF SOFTWARE.—Software that provides for the electronic filing of data in the Automated Tariff Filing and Information System shall be submitted to the Commission for certification. Not later than fourteen days after a person submits software to the Commission for certification, the Commission shall—

[(A) certify the software if it provides for the electronic filing of data; and

[(B) publish in the Federal Register notice of that certification.

[(2) REPAYABLE ADVANCE.—

[(A) Availability and use of advance. Upon the date of enactment of this Act [enacted Nov. 2, 1992], the Secretary of the Treasury shall make available to the Commission, as a repayable advance, not more than \$4,000,000, to remain available until expended. The Commission shall spend these funds to complete and upgrade the capacity of the Automated Tariff Filing and Information System to provide access to information under this section.

[(B) REQUIREMENT TO REPAY.—

[(i) IN GENERAL.—Any advance made to the Commission under subparagraph (A) shall be repaid, with interest, to the general fund of the Treasury not later than September 30, 1995.

[(ii) INTEREST.—Interest on any advance made to the Commission under subparagraph (A) —

[(I) shall be at a rate determined by the Secretary of the Treasury, as of the close of the calendar month preceding the month in which the advance is made, to be equal to the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the anticipated period during which the advance will be outstanding; and

[(II) shall be compounded annually.

[(3) USE OF RETAINED AMOUNTS.—Out of amounts collected by the Commission under this section, amounts shall be retained and expended by the Commission for each fiscal year, without fiscal year limitation, to carry out this section and pay back the Secretary of the Treasury for the advance made available under paragraph (2).

[(4) DEPOSIT IN TREASURY.—Except for the amounts retained by the Commission under paragraph (3), fees collected under

this section shall be deposited in the general fund of the Treasury as offsetting receipts.

[(h) RESTRICTION.—No fee may be collected under this section after fiscal year 1995.]

[(i) CONFORMING AMENDMENT.—Section 2 of the Act of August 16, 1989 (46 App. U.S.C. 1111c), is repealed.]

Section 9, Shipping Act of 1984

[46 U.S.C. App. 1708]

§ 1708. Controlled carriers

(a) CONTROLLED CARRIER RATES.—No controlled carrier subject to this section may maintain rates or charges in its tariffs or [service contracts filed with the Commission] *service contracts, or charge or assess rates*, that are below a level that is just and reasonable, nor may any such carrier establish [or maintain] *maintain, or enforce* unjust or unreasonable classifications, rules, or regulations in those tariffs or service contracts. An unjust or unreasonable classification, rule, or regulation means one that results or is likely to result in the carriage or handling of cargo at rates or charges that are below a just and reasonable level. The [Commission] *Board* may, at any time after notice and hearing, [disapprove] *prohibit the publication or use of* any rates, charges, classifications, rules, or regulations that the controlled carrier has failed to demonstrate to be just and reasonable. In a proceeding under this subsection, the burden of proof is on the controlled carrier to demonstrate that its rates, charges, classifications, rules, or regulations are just and reasonable. Rates, charges, classifications, rules, or regulations [filed by a controlled carrier that have been rejected, suspended, or disapproved by the Commission] *that have been suspended or prohibited by the [Commission] Board* are void and their use is unlawful.

(b) RATE STANDARDS.—For the purpose of this section, in determining whether rates, charges, classifications, rules, or regulations by a controlled carrier are just and reasonable, the [Commission] *Board* [may take into account appropriate factors including, but not limited to, whether—] *shall take into account whether the rates or charges which have been published or assessed or which would result from the pertinent classifications, rules, or regulations are below a level which is fully compensatory to the controlled carrier based upon that carrier's actual costs or upon its constructive costs. For purposes of the preceding sentence, the term 'constructive costs' means the costs of another carrier, other than a controlled carrier, operating similar vessels and equipment in the same or a similar trade. The [Commission] Board may also take into account other appropriate factors, including but not limited to, whether—*

[(1) the rates or charges which have been filed or which would result from the pertinent classifications, rules, or regulations are below a level which is fully compensatory to the controlled carrier based upon that carrier's actual costs or upon its constructive costs, which are hereby defined as the costs of an-

other carrier, other than a controlled carrier, operating similar vessels and equipment in the same or a similar trade;]

[(2)] (1) the rates, charges, classifications, rules, or regulations are the same as or similar to those [filed] *published or assessed* or assessed by other carriers in the same trade;

[(3)] (2) the rates, charges, classifications, rules, or regulations are required to assure movement of particular cargo in the trade; or

[(4)] (3) the rates, charges, classifications, rules, or regulations are required to maintain acceptable continuity, level, or quality of common carrier service to or from affected ports.

(c) EFFECTIVE DATE OF RATES.—Notwithstanding section 8(d) of this Act [46 U.S.C. App. 1707(d)] and except for service contracts, the rates, charges, classifications, rules, or regulations of controlled carriers may not, without special permission of the [Commission] Board, become effective sooner than the 30th day after the date of [filing with the Commission.] *publication*. Each controlled carrier shall, upon the request of the [Commission] Board, file, within 20 days of request (with respect to its existing or proposed rates, charges, classifications, rules, or regulations), a statement of justification that sufficiently details the controlled carrier's need and purpose for such rates, charges, classifications, rules, or regulations upon which the [Commission] Board may reasonably base its determination of the lawfulness thereof.

(d) [DISAPPROVAL OF RATES.—] *PROHIBITION OF RATES.*—*Within 120 days after the receipt of information requested by the [Commission] Board under this section, the [Commission] Board shall determine whether the rates, charges, classifications, rules, or regulations of a controlled carrier may be unjust and unreasonable. Whenever the [Commission] Board is of the opinion that the rates, charges, classifications, rules, or regulations [filed] published or assessed by a controlled carrier may be unjust and unreasonable, the [Commission] Board [may issue] shall issue an order to the controlled carrier to show cause why those rates, charges, classifications, rules, or regulations should not be [disapproved.] prohibited. Pending a determination as to their lawfulness in such a proceeding, the [Commission] Board may suspend the rates, charges, classifications, rules, or regulations at any time before their effective date. In the case of rates, charges, classifications, rules, or regulations that have already become effective, the [Commission] Board may, upon the issuance of an order to show cause, suspend those rates, charges, classifications, rules, or regulations on not less than [60] 30 days' notice to the controlled carrier. No period of suspension under this subsection may be greater than 180 days. Whenever the [Commission] Board has suspended any rates, charges, classifications, rules, or regulations under this subsection, the affected controlled carrier may [file] publish new rates, charges, classifications, rules, or regulations to take effect immediately during the suspension period in lieu of the suspended rates, charges, classifications, rules, or regulations—except that the [Commission] Board may reject the new rates, charges, classifications, rules, or regulations if it is of the opinion that they are unjust and unreasonable.*

(e) **PRESIDENTIAL REVIEW.**—Concurrently with the publication thereof, the **【Commission】 Board** shall transmit to the President each order of suspension or final order of **【disapproval】 prohibition** of rates, charges, classifications, rules, or regulations of a controlled carrier subject to this section. Within 10 days after the receipt or the effective date of the **【Commission】 Board** order, the President may request the **【Commission】 Board** in writing to stay the effect of the **【Commission’s】 Board’s** order if the President finds that the stay is required for reasons of national defense or foreign policy, which reasons shall be specified in the report. Notwithstanding any other law, the **【Commission】 Board** shall immediately grant the request by the issuance of an order in which the President’s request shall be described. During any such stay, the President shall, whenever practicable, attempt to resolve the matter in controversy by negotiation with representatives of the applicable foreign governments.

(f) **EXCEPTIONS.**—This section does not apply to—

(1) a controlled carrier of a state whose vessels are entitled by a treaty of the United States to receive national or most-favored-nation treatment; or

【(2) a controlled carrier of a state which, on the effective date of this section [see the Effective date of section note to this section], has subscribed to the statement of shipping policy contained in note 1 to annex A of the Code of Liberalization of Current Invisible Operations, adopted by the Council of the Organization for Economic Cooperation and Development;

【(3) rates, charges, classifications, rules, or regulations of a controlled carrier in any particular trade that are covered by an agreement effective under section 6 of this Act [46 U.S.C. App. 1705], other than an agreement in which all of the members are controlled carriers not otherwise excluded from the provisions of this subsection;

【(4) rates, charges, classifications, rules, or regulations governing the transportation of cargo by a controlled carrier between the country by whose government it is owned or controlled, as defined herein and the United States; or】

【(5) 】 (2) a trade served exclusively by controlled carriers.

Section 10, Shipping Act of 1984

[46 U.S.C. App. 1709]

1709. Prohibited acts

(a) **IN GENERAL.**—No person may—

(1) knowingly and willfully, directly or indirectly, by means of false billing, false classification, false weighing, false report of weight, false measurement, or by any other unjust or unfair device or means obtain or attempt to obtain ocean transportation for property at less than the rates or charges that would otherwise be applicable;

(2) operate under an agreement required to be filed under section 5 of this Act [46 U.S.C. App. 1704] that has not become

effective under section 6 [46 U.S.C. App. 1705], or that has been rejected, disapproved, or canceled; or

(3) operate under an agreement required to be filed under section 5 of this Act [46 U.S.C. App. 1704] except in accordance with the terms of the agreement or any modifications made by the **Commission** *Board* to the agreement.

(b) COMMON CARRIERS.—No common carrier, either alone or in conjunction with any other person, directly or indirectly, may—

[(1) charge, demand, collect, or receive greater, less, or different compensation for the transportation of property or for any service in connection therewith than the rates and charges that are shown in its tariffs or service contracts;

[(2) rebate, refund, or remit in any manner, or by any device, any portion of its rates except in accordance with its tariffs or service contracts;

[(3) extend or deny to any person any privilege, concession, equipment, or facility except in accordance with its tariffs or service contracts;]

[(4)] (1) allow any person to obtain transportation for property at less than the rates or charges established by the carrier in its tariff or service contract by means of false billing, false classification, false weighing, false measurement, or by any other unjust or unfair device or means;

(2) provide services, facilities, or privileges, other than in accordance with the rates or terms in its tariffs or service contracts in effect when the service was provided;

[(5)] (3) retaliate against any shipper by refusing, or threatening to refuse, cargo space accommodations when available, or resort to other unfair or unjustly discriminatory methods because the shipper has patronized another carrier, or has filed a complaint, or for any other reason;

[(6)] (4) [except for service contracts,] for service pursuant to a tariff, engage in any unfair or unjustly discriminatory practice in the matter of—

(A) [rates;] rates or charges;

(B) cargo classifications;

(C) cargo space accommodations or other facilities, due regard being had for the proper loading of the vessel and the available tonnage;

(D) the loading and landing of freight; or

(E) the adjustment and settlement of claims;

(5) for service pursuant to a service contract, engage in any unfair or unjustly discriminatory practice in the matter of rates or charges with respect to any location, port, class or type of shipper or ocean transportation intermediary, or description of traffic;

[(7) employ any fighting ship;]

(6) use a vessel in a particular trade to drive another ocean common carrier out of that trade;

[(8)] (7) offer or pay any deferred rebates;

[(9) use a loyalty contract, except in conformity with the antitrust laws;

[(10) demand, charge, or collect any rate or charge that is unjustly discriminatory between shippers or ports;

[(11) except for service contracts, make or give any undue or unreasonable preference or advantage to any particular person, locality, or description of traffic in any respect whatsoever;

[(12) subject any particular person, locality, or description of traffic to an unreasonable refusal to deal or any undue or unreasonable prejudice or disadvantage in any respect whatsoever;

[(13) refuse to negotiate with a shippers' association;]

(8) *for service pursuant to a tariff, give any undue or unreasonable preference or advantage or impose any undue or unreasonable prejudice or disadvantage;*

(9) *for service pursuant to a service contract, give any undue or unreasonable preference or advantage or impose any undue or unreasonable prejudice or disadvantage with respect to any location, port, class or type of shipper or ocean transportation intermediary, or description of traffic;*

(10) *unreasonably refuse to deal or negotiate;*

[(14)] (11) knowingly and willfully accept cargo from or transport cargo for the account of [a non-vessel-operating common carrier] *an ocean transportation intermediary* that does not have a tariff and a bond, insurance, or other surety as required by [sections 8 and 23] *sections 8 and 19* of this Act [46 U.S.C. App. 1707 and 1721];

[(15)] (12) knowingly and willfully enter into a service contract with [a non-vessel-operating common carrier] *an ocean transportation intermediary* [or in which a non-vessel-operating common carrier is listed as an affiliate] that does not have a tariff and a bond, insurance, or other surety as required by [sections 8 and 23] *sections 8 and 19* of this [Act;] *Act*, [46 U.S.C. App. 1707 and 1721] *or with an affiliate of such ocean transportation intermediary; or*

[(16)] (13) knowingly disclose, offer, solicit, or receive any information concerning the nature, kind, quantity, destination, consignee, or routing of any property tendered or delivered to a common carrier without the consent of the shipper or consignee if that information—

(A) may be used to the detriment or prejudice of the shipper or consignee;

(B) may improperly disclose its business transaction to a competitor; or

(C) may be used to the detriment or prejudice of any common carrier.

Nothing in [paragraph (16)] *paragraph (13)* shall be construed to prevent providing such information, in response to legal process, to the United States, *the [Commission] Board*, or to an independent neutral body operating within the scope of its authority to fulfill the policing obligations of the parties to an agreement effective under this Act. Nor shall it be prohibited for any ocean common carrier that is a party to a conference agreement approved under this Act, or any receiver, trustee, lessee, agent, or employee of that carrier, or any other person authorized by that carrier to receive information, to give information to the conference or any person, firm, corporation, or agency designated by the conference, or to prevent the

conference or its designee from soliciting or receiving information for the purpose of determining whether a shipper or consignee has breached an agreement with the conference or its member lines or for the purpose of determining whether a member of the conference has breached the conference agreement, or for the purpose of compiling statistics of cargo movement, but the use of such information for any other purpose prohibited by this Act or any other Act is prohibited.

(c) **CONCERTED ACTION.**—No conference or group of two or more common carriers may—

(1) boycott or take any other concerted action resulting in an unreasonable refusal to deal;

(2) engage in conduct that unreasonably restricts the use of intermodal services or technological innovations;

(3) engage in any predatory practice designed to eliminate the participation, or deny the entry, in a particular trade of a common carrier not a member of the conference, a group of common carriers, an ocean tramp, or a bulk carrier;

(4) negotiate with a nonocean carrier or group of nonocean carriers (for example, truck, rail, or air operators) on any matter relating to rates or services provided to ocean common carriers within the United States by those nonocean carriers: Provided, That this paragraph does not prohibit the setting and publishing of a joint through rate by a conference, joint venture, or an association of ocean common carriers;

(5) deny in the export foreign commerce of the United States compensation to an ocean **freight forwarder** *transportation intermediary, as defined by section 3(17)(A) of this Act*, or limit that compensation to less than a reasonable amount; or

(6) allocate shippers among specific carriers that are parties to the agreement or prohibit a carrier that is a party to the agreement from soliciting cargo from a particular shipper, except as otherwise required by the law of the United States or the importing or exporting country, or as agreed to by a shipper in a service contract.

(d) **COMMON CARRIERS, OCEAN FREIGHT FORWARDERS, Transportation Intermediaries, and Marine Terminal Operators.**—

(1) No common carrier, ocean **freight forwarder**, *transportation intermediary*, or marine terminal operator may fail to establish, observe, and enforce just and reasonable regulations and practices relating to or connected with receiving, handling, storing, or delivering property.

(2) No marine terminal operator may agree with another marine terminal operator or with a common carrier to boycott, or unreasonably discriminate in the provision of terminal services to, any common carrier or ocean tramp.

(3) The prohibitions in **subsection (b) (11), (12), and (16) subsections (b) (8), (9), (10), and (13)** of this section apply to marine terminal operators.

(4) *The prohibition in subsection (b)(13) of this section applies to ocean transportation intermediaries, as defined in section 3(17)(A) of this Act.*

(e) JOINT VENTURES.—For purposes of this section, a joint venture or consortium of two or more common carriers but operated as a single entity shall be treated as a single common carrier.

Section 11, Shipping Act of 1984

[46 U.S.C. App. 1710]

§ 1710. Complaints, investigations, reports, and reparations [Section 11, Shipping Act of 1984]

(a) FILING OF COMPLAINTS.—Any person may file with the [Commission] *Board* a sworn complaint alleging a violation of this Act, other than section 6(g) [46 U.S.C. App. 1705(g)], and may seek reparation for any injury caused to the complainant by that violation.

(b) SATISFACTION OR INVESTIGATION OF COMPLAINTS.—The [Commission] *Board* shall furnish a copy of a complaint filed pursuant to subsection (a) of this section to the person named therein who shall, within a reasonable time specified by the [Commission] *Board*, satisfy the complaint or answer it in writing. If the complaint is not satisfied, the [Commission] *Board* shall investigate it in an appropriate manner and make an appropriate order.

(c) [COMMISSION] *BOARD* INVESTIGATIONS.—The [Commission] *Board*, upon complaint or upon its own motion, may investigate any conduct or agreement that it believes may be in violation of this Act. Except in the case of an injunction granted under subsection (h) of this section, each agreement under investigation under this section remains in effect until the [Commission] *Board* issues an order under this subsection. The [Commission] *Board* may by order disapprove, cancel, or modify any agreement filed under section 5(a) of this Act [46 U.S.C. App. 1704(a)] that operates in violation of this Act. With respect to agreements inconsistent with section 6(g) of this Act [46 U.S.C. App. 1705(g)], the [Commission's] *Board's* sole remedy is under section 6(h) [46 U.S.C. App. 1705(h)].

(d) CONDUCT OF INVESTIGATION.—Within 10 days after the initiation of a proceeding under this section, the [Commission] *Board* shall set a date on or before which its final decision will be issued. This date may be extended for good cause by order of the [Commission] *Board*.

(e) UNDUE DELAYS.—If, within the time period specified in subsection (d), the [Commission] *Board* determines that it is unable to issue a final decision because of undue delays caused by a party to the proceedings, the [Commission] *Board* may impose sanctions, including entering a decision adverse to the delaying party.

(f) REPORTS.—The [Commission] *Board* shall make a written report of every investigation made under this Act in which a hearing was held stating its conclusions, decisions, findings of fact, and order. A copy of this report shall be furnished to all parties. The [Commission] *Board* shall publish each report for public information, and the published report shall be competent evidence in all courts of the United States.

(g) REPARATIONS.—For any complaint filed within 3 years after the cause of action accrued, the [Commission] *Board* shall, upon

petition of the complainant and after notice and hearing, direct payment of reparations to the complainant for actual injury (which, for purposes of this subsection, also includes the loss of interest at commercial rates compounded from the date of injury) caused by a violation of this Act plus reasonable attorney's fees. Upon a showing that the injury was caused by activity that is prohibited by [section 10(b) (5) or (7) [46 U.S.C. App. 1709(b) (5), (7)]] *section 10(b) (3) or (6) or section 10(c) (1) or (3) of this Act [46 U.S.C. App. 1709(c) (1), (3)], or that violates section 10(a) (2) or (3) [46 U.S.C. App. 1709(a) (2), (3)], the [Commission] Board may direct the payment of additional amounts; but the total recovery of a complainant may not exceed twice the amount of the actual injury. In the case of injury caused by an activity that is prohibited by [section 10(b) (6) (A) or (B)] *section 10(b)(4) (A) or (B) of this Act [46 U.S.C. App. 1709(b)(6) (A), (B)], the amount of the injury shall be the difference between the rate paid by the injured shipper and the most favorable rate paid by another shipper.**

(h) INJUNCTION.—

(1) In connection with any investigation conducted under this section, the [Commission] Board may bring suit in a district court of the United States to enjoin conduct in violation of this Act. Upon a showing that standards for granting injunctive relief by courts of equity are met and after notice to the defendant, the court may grant a temporary restraining order or preliminary injunction for a period not to exceed 10 days after the [Commission] Board has issued an order disposing of the issues under investigation. Any such suit shall be brought in a district in which the defendant resides or transacts business.

(2) After filing a complaint with the [Commission] Board under subsection (a), the complainant may file suit in a district court of the United States to enjoin conduct in violation of this Act. Upon a showing that standards for granting injunctive relief by courts of equity are met and after notice to the defendant, the court may grant a temporary restraining order or preliminary injunction for a period not to exceed 10 days after the [Commission] Board has issued an order disposing of the complaint. Any such suit shall be brought in the district in which the defendant has been sued by the [Commission] Board under paragraph (1); or, if no suit has been filed, in a district in which the defendant resides or transacts business. A defendant that prevails in a suit under this paragraph shall be allowed reasonable attorney's fees to be assessed and collected as part of the costs of the suit.

Section 10002, Foreign Shipping Practices Act of 1988

[46 U.S.C. App. 1710a]

§ 1710a. Foreign laws and practices

(a) DEFINITIONS.—For purposes of this section—

(1) “common carrier”, “marine terminal operator”, [“non-vessel-operating common carrier”,] “*ocean transportation intermediary*”, “ocean common carrier”, “person”, “shipper”, “shippers’ association”, and “United States” have the meanings given each such term, respectively, in section 3 of the Shipping Act of 1984 (46 App. U.S.C. 1702) ;

(2) “foreign carrier” means an ocean common carrier a majority of whose vessels are documented under the laws of a country other than the United States;

(3) “maritime services” means port-to-port carriage of cargo by the vessels operated by ocean common carriers;

(4) “maritime-related services” means intermodal operations, terminal operations, cargo solicitation, [forwarding and] agency services, [non-vessel-operating common carrier] *ocean transportation intermediary services* and operations, and all other activities and services integral to total transportation systems of ocean common carriers and their foreign domiciled affiliates on their own and others’ behalf;

(5) “United States carrier” means an ocean common carrier which operates vessels documented under the laws of the United States; and

(6) “United States oceanborne trade” means the carriage of cargo between the United States and a foreign country, whether direct or indirect, by an ocean common carrier.

(b) **AUTHORITY TO CONDUCT INVESTIGATIONS.**—The [Federal Maritime Commission] *Intermodal Transportation Board* shall investigate whether any laws, rules, regulations, policies, or practices of foreign governments, or any practices of foreign carriers or other persons providing maritime or maritime-related services in a foreign country result in the existence of conditions that—

(1) adversely affect the operations of United States carriers in United States oceanborne trade; and

(2) do not exist for foreign carriers of that country in the United States under the laws of the United States or as a result of acts of United States carriers or other persons providing maritime or maritime-related services in the United States.

(c) **INVESTIGATIONS.**—

(1) Investigations under subsection (b) of this section may be initiated by the [Commission] *Board* on its own motion or on the petition of any person, including any common carrier, shipper, shippers’ association, ocean [freight forwarder,] *transportation intermediary*, or marine terminal operator, or any branch, department, agency, or other component of the Government of the United States.

(2) The [Commission] *Board* shall complete any such investigation and render a decision within 120 days after it is initiated, except that the [Commission] *Board* may extend such 120-day period for an additional 90 days if the [Commission] *Board* is unable to obtain sufficient information to determine whether a condition specified in subsection (b) of this section exists. Any notice providing such an extension shall clearly state the reasons for such extension.

(d) **INFORMATION REQUESTS.**—

(1) In order to further the purposes of subsection (b) of this section, the **【Commission】 Board** may, by order, require any person (including any common carrier, shipper, shippers' association, ocean **【freight forwarder,】** *transportation intermediary* or marine terminal operator, or any officer, receiver, trustee, lessee, agent or employee thereof) to file with the **【Commission】 Board** any periodic or special report, answers to questions, documentary material, or other information which the **【Commission】 Board** considers necessary or appropriate. The **【Commission】 Board** may require that the response to any such order shall be made under oath. Such response shall be furnished in the form and within the time prescribed by the **【Commission】 Board**.

(2) In an investigation under subsection (b) of this section, the **【Commission】 Board** may issue subpoenas to compel the attendance and testimony of witnesses and the production of records or other evidence.

(3) Notwithstanding any other provision of law, the **【Commission】 Board** may, in its discretion, determine that any information submitted to it in response to a request under this subsection, or otherwise, shall not be disclosed to the public.

(e) ACTION AGAINST FOREIGN CARRIERS.—

(1) Whenever, after notice and opportunity for comment or hearing, the **【Commission】 Board** determines that the conditions specified in subsection (b) of this section exist, the **【Commission】 Board** shall take such action as it considers necessary and appropriate against any foreign carrier that is a contributing cause to, or whose government is a contributing cause to, such conditions, in order to offset such conditions. Such action may include—

(A) limitations on sailings to and from United States ports or on the amount or type of cargo carried;

(B) suspension, in whole or in part, of any or all tariffs **【filed with the Commission,】** and *service contracts*, including the right of an ocean common carrier to use any or all tariffs and *service contracts* of conferences in United States trades of which it is a member for such period as the **【Commission】 Board** specifies;

(C) suspension, in whole or in part, of the right of an ocean common carrier to operate under any agreement filed with the **【Commission】 Board**, including agreements authorizing preferential treatment at terminals, preferential terminal leases, space chartering, or pooling of cargo or revenues with other ocean common carriers; and

(D) a fee, not to exceed \$1,000,000 per voyage.

(2) The **【Commission】 Board** may consult with, seek the cooperation of, or make recommendations to other appropriate Government agencies prior to taking any action under this subsection.

(3) Before a determination under this subsection becomes effective or a request is made under subsection (f) of this section, the determination shall be submitted immediately to the President who may, within 10 days after receiving such determination, disapprove the determination in writing, setting forth the

reasons for the disapproval, if the President finds that disapproval is required for reasons of the national defense or the foreign policy of the United States.

(f) ACTIONS UPON REQUEST OF THE **【COMMISSION】 Board**.—Whenever the conditions specified in subsection (b) of this section are found by the **【Commission】 Board** to exist, upon the request of the **【Commission】 Board**—

(1) the collector of customs at any port or place of destination in the United States shall refuse the clearance required by section 4197 of the Revised Statutes (46 App. U.S.C. 91) to any vessel of a foreign carrier that is identified by the **【Commission】 Board** under subsection (e) of this section; and

(2) the Secretary of the department in which the Coast Guard is operating shall deny entry, for purposes of oceanborne trade, of any vessel of a foreign carrier that is identified by the **【Commission】 Board** under subsection (e) of this section to any port or place in the United States or the navigable waters of the United States, or shall detain any such vessel at the port or place in the United States from which it is about to depart for any other port or place in the United States.

(g) REPORT.—The **【Commission】 Board** shall include in its annual report to Congress—

(1) a list of the twenty foreign countries which generated the largest volume of oceanborne liner cargo for the most recent calendar year in bilateral trade with the United States;

(2) an analysis of conditions described in subsection (b) of this section being investigated or found to exist in foreign countries;

(3) any actions being taken by the **【Commission】 Board** to offset such conditions;

(4) any recommendations for additional legislation to offset such conditions; and

(5) a list of petitions filed under subsection (c) of this section that the **【Commission】 Board** rejected, and the reasons for each such rejection.

(h) The actions against foreign carriers authorized in subsections (e) and (f) of this section may be used in the administration and enforcement of section 13**【(b)(5)】(b)(6)** of the Shipping Act of 1984 (46 App. U.S.C. 1712**【(b)(5)】(b)(6)**) or section 19(1)(b) of the Merchant Marine Act, 1920 (46 App. U.S.C. 876).

(i) Any rule, regulation or final order of the **【Commission】 Board** issued under this section shall be reviewable exclusively in the same forum and in the same manner as provided in section **【2342(3)(B)】 2342(5)(B)** of title 28, United States Code.

Section 13, Shipping Act of 1984

[46 U.S.C. App. 1712]

§ 1712. Penalties

(a) ASSESSMENT OF PENALTY.—Whoever violates a provision of this Act, a regulation issued thereunder, or a **【Commission】 Board** order is liable to the United States for a civil penalty. The amount

of the civil penalty, unless otherwise provided in this Act, may not exceed \$5,000 for each violation unless the violation was willfully and knowingly committed, in which case the amount of the civil penalty may not exceed \$25,000 for each violation. Each day of a continuing violation constitutes a separate offense. *The amount of any penalty imposed upon a common carrier under this subsection shall constitute a lien upon the vessels of the common carrier and any such vessel may be libeled therefore in the district court of the United States for the district in which it may be found.*

(b) ADDITIONAL PENALTIES.—

(1) For a violation of [section 10(b) (1), (2), (3), (4), or (8)] *section 10(b) (1), (2), or (7) of this Act [46 U.S.C. App. 1709(b) (1), (2), (7)]*, the [Commission] Board may suspend any or all tariffs of the common carrier, or that common carrier's right to use any or all tariffs of conferences of which it is a member, for a period not to exceed 12 months.

(2) For failure to supply information ordered to be produced or compelled by subpoena under section 12 of this Act [46 U.S.C. App. 1711], the [Commission] Board may, after notice and an opportunity for hearing, suspend any or all tariffs of a common carrier, or that common carrier's right to use any or all tariffs of conferences of which it is a member.

(3) A common carrier that accepts or handles cargo for carriage under a tariff that has been suspended or after its right to utilize that tariff has been suspended is subject to a civil penalty of not more than \$50,000 for each shipment.

(4) *If the [Commission] Board finds, after notice and an opportunity for a hearing, that a common carrier has failed to supply information ordered to be produced or compelled by subpoena under section 12 of this Act, the [Commission] Board may request that the Secretary of the Treasury refuse or revoke any clearance required for a vessel operated by that common carrier. Upon request by the [Commission] Board, the Secretary of the Treasury shall, with respect to the vessel concerned, refuse or revoke any clearance required by section 4197 of the Revised Statutes of the United States (46 U.S.C. App. 91).*

[(4)] (5) If, in defense of its failure to comply with a subpoena or discovery order, a common carrier alleges that documents or information located in a foreign country cannot be produced because of the laws of that country, the [Commission] Board shall immediately notify the Secretary of State of the failure to comply and of the allegation relating to foreign laws. Upon receiving the notification, the Secretary of State shall promptly consult with the government of the nation within which the documents or information are alleged to be located for the purpose of assisting the [Commission] Board in obtaining the documents or information sought.

[(5)] (6) If, after notice and hearing, the [Commission] Board finds that the action of a common carrier, acting alone or in concert with any person, or a foreign government has unduly impaired access of a vessel documented under the laws of the United States to ocean trade between foreign ports, the [Commission] Board shall take action that it finds appropriate, including the imposition of any of the penalties author-

ized under **paragraphs (1), (2), and (3)] paragraphs (1), (2), (3), and (4)** of this subsection.

[(6)] (7) Before an order under this subsection becomes effective, it shall be immediately submitted to the President who may, within 10 days after receiving it, disapprove the order if the President finds that disapproval is required for reasons of the national defense or the foreign policy of the United States.

(c) **ASSESSMENT PROCEDURES.**—Until a matter is referred to the Attorney General, the **[Commission] Board** may, after notice and an opportunity for hearing, assess each civil penalty provided for in this Act. In determining the amount of the penalty, the **[Commission] Board** shall take into account the nature, circumstances, extent, and gravity of the violation committed and, with respect to the violator, the degree of culpability, history of prior offenses, ability to pay, and such other matters as justice may require. The **[Commission] Board** may compromise, modify, or remit, with or without conditions, any civil penalty.

(d) **REVIEW OF CIVIL PENALTY.**—A person against whom a civil penalty is assessed under this section may obtain review thereof under chapter 158 of title 28, United States Code [28 U.S.C. 2341 et seq.].

(e) **FAILURE TO PAY ASSESSMENT.**—If a person fails to pay an assessment of a civil penalty after it has become final or after the appropriate court has entered final judgment in favor of the **[Commission] Board**, the Attorney General at the request of the **[Commission] Board** may seek to recover the amount assessed in an appropriate district court of the United States. In such an action, the court shall enforce the **[Commission's] Board's** order unless it finds that the order was not regularly made or duly issued.

(f) **LIMITATIONS.**—

(1) No penalty may be imposed on any person for conspiracy to violate section 10(a)(1), (b)(1), **[or (b)(4)] or (b)(2)** of this Act [46 U.S.C. App. 1709(a)(1), **[(b)(1), (4)] (b)(1), (2)**], or to defraud the **[Commission] Board** by concealment of such a violation.

(2) Each proceeding to assess a civil penalty under this section shall be commenced within 5 years from the date the violation occurred.

Section 15, Shipping Act of 1984

46 U.S.C. App. 1714]

§ 1714. Reports [and certificates]

[(a) REPORTS.]—The **[Commission] Board** may require any common carrier, or any officer, receiver, trustee, lessee, agent, or employee thereof, to file with it any periodical or special report or any account, record, rate, or charge, or memorandum of any facts and transactions appertaining to the business of that common carrier. The report, account, record, rate, charge, or memorandum shall be made under oath whenever the **[Commission] Board** so requires, and shall be furnished in the form and within the time prescribed by the **[Commission] Board** Conference minutes required to be

filed with the **【Commission】 Board** under this section shall not be released to third parties or published by the **【Commission】 Board**.

【(b) CERTIFICATION.—The Commission shall require the chief executive officer of each common carrier and, to the extent it deems feasible, may require any shipper, shippers' association, marine terminal operator, ocean freight forwarder, or broker to file a periodic written certification made under oath with the Commission attesting to—

【(1) a policy prohibiting the payment, solicitation, or receipt of any rebate that is unlawful under the provisions of this Act;

【(2) the fact that this policy has been promulgated recently to each owner, officer, employee, and agent thereof;

【(3) the details of the efforts made within the company or otherwise to prevent or correct illegal rebating; and

【(4) a policy of full cooperation with the Commission in its efforts to end those illegal practices.

【Whoever fails to file a certificate required by the Commission under this subsection is liable to the United States for a civil penalty of not more than \$5,000 for each day the violation continues.】

Section 16, Shipping Act of 1984

[46 U.S.C. App. 1715]

§ 1715. Exemptions

The **【Commission】 Board**, upon application or on its own motion, may by order or rule exempt for the future any class of agreements between persons subject to this Act or any specified activity of those persons from any requirement of this Act if it finds that the exemption will not **【substantially impair effective regulation by the Commission, be unjustly discriminatory, result in a substantial reduction in competition, or be detrimental to commerce.】** *result in a substantial reduction in competition or be detrimental to commerce.* The **【Commission】 Board** may attach conditions to any exemption and may, by order, revoke any exemption. No order or rule of exemption or revocation of exemption may be issued unless opportunity for hearing has been afforded interested persons and departments and agencies of the United States.

Section 18, Shipping Act of 1984

§ 46 U.S.C. App. 1717

【§ 1717. Agency reports and Advisory Commission】

【(a) COLLECTION OF DATA.—For a period of 5 years following the enactment of this Act [enacted Mar. 20, 1984], the Commission shall collect and analyze information concerning the impact of this Act upon the international ocean shipping industry, including data on:

【(1) increases or decreases in the level of tariffs;

【(2) changes in the frequency or type of common carrier services available to specific ports or geographic regions;

[(3) the number and strength of independent carriers in various trades; and

[(4) the length of time, frequency, and cost of major types of regulatory proceedings before the Commission.

[(b) CONSULTATION WITH OTHER DEPARTMENTS AND AGENCIES.—The Commission shall consult with the Department of Transportation, the Department of Justice, and the Federal Trade Commission annually concerning data collection. The Department of Transportation, the Department of Justice, and the Federal Trade Commission shall at all times have access to the data collected under this section to enable them to provide comments concerning data collection.

[(c) AGENCY REPORTS.—

[(1) Within 6 months after expiration of the 5-year period specified in subsection (a), the Commission shall report the information, with an analysis of the impact of this Act, to Congress, to the Advisory Commission on Conferences in Ocean Shipping established in subsection (d), and to the Department of Transportation, the Department of Justice, and the Federal Trade Commission.

[(2) Within 60 days after the Commission submits its report, the Department of Transportation, the Department of Justice, and the Federal Trade Commission shall furnish an analysis of the impact of this Act to Congress and to the Advisory Commission on Conferences in Ocean Shipping.

[(3) The reports required by this subsection shall specifically address the following topics:

[(A) the advisability of adopting a system of tariffs based on volume and mass of shipment;

[(B) the need for antitrust immunity for ports and marine terminals; and

[(C) the continuing need for the statutory requirement that tariffs be filed with and enforced by the Commission.

[(d) ESTABLISHMENT AND COMPOSITION OF ADVISORY COMMISSION.—

[(1) Effective 5½ years after the date of enactment of this Act [enacted Mar. 20, 1984], there is established the Advisory Commission on Conferences in Ocean Shipping (hereinafter referred to as the “Advisory Commission”).

[(2) The Advisory Commission shall be composed of 17 members as follows:

[(A) a cabinet level official appointed by the President;

[(B) 4 members from the United States Senate appointed by the President pro tempore of the Senate, 2 from the membership of the Committee on Commerce, Science, and Transportation and 2 from the membership of the Committee on the Judiciary;

[(C) 4 members from the United States House of Representatives appointed by the Speaker of the House, 2 from the membership of the Committee on Merchant Marine and Fisheries, and 2 from the membership of the Committee on the Judiciary; and

[(D) 8 members from the private sector appointed by the President.

[(3) The President shall designate the chairman of the Advisory Commission.

[(4) The term of office for members shall be for the term of the Advisory Commission.

[(5) A vacancy in the Advisory Commission shall not affect its powers, and shall be filled in the same manner in which the original appointment was made.

[(6) Nine members of the Advisory Commission shall constitute a quorum, but the Advisory Commission may permit as few as 2 members to hold hearings.

[(e) COMPENSATION OF MEMBERS OF THE ADVISORY COMMISSION.—

[(1) Officials of the United States Government and Members of Congress who are members of the Advisory Commission shall serve without compensation in addition to that received for their services as officials and Members, but they shall be reimbursed for reasonable travel, subsistence, and other necessary expenses incurred by them in the performance of the duties vested in the Advisory Commission.

[(2) Members of the Advisory Commission appointed from the private sector shall each receive compensation not exceeding the maximum per diem rate of pay for grade 18 of the General Schedule under section 5332 of title 5, United States Code [5 U.S.C. 5332], when engaged in the performance of the duties vested in the Advisory Commission, plus reimbursement for reasonable travel, subsistence, and other necessary expenses incurred by them in the performance of those duties, notwithstanding the limitations in sections 5701 through 5733 of title 5, United States Code [5 U.S.C. 5701–5733].

[(3) Members of the Advisory Commission appointed from the private sector are not subject to section 208 of title 18, United States Code [18 U.S.C. 208]. Before commencing service, these members shall file with the Advisory Commission a statement disclosing their financial interests and business and former relationships involving or relating to ocean transportation. These statements shall be available for public inspection at the Advisory Commission's offices.

[(f) ADVISORY COMMISSION FUNCTIONS.—The Advisory Commission shall conduct a comprehensive study of, and make recommendations concerning, conferences in ocean shipping. The study shall specifically address whether the Nation would be best served by prohibiting conferences, or by closed or open conferences.

[(g) POWERS OF THE ADVISORY COMMISSION.—

[(1) The Advisory Commission may, for the purpose of carrying out its functions, hold such hearings and sit and act at such times and places, administer such oaths, and require, by subpoena or otherwise, the attendance and testimony of such witnesses, and the production of such books, records, correspondence, memorandums, papers, and documents as the Advisory Commission may deem advisable. Subpenas may be issued to any person within the jurisdiction of the United States courts, under the signature of the chairman, or any duly designated member, and may be served by any person designated by the chairman, or that member. In case of contumacy by, or

refusal to obey a subpoena to, any person, the Advisory Commission may advise the Attorney General who shall invoke the aid of any court of the United States within the jurisdiction of which the Advisory Commission's proceedings are carried on, or where that person resides or carries on business, in requiring the attendance and testimony of witnesses and the production of books, papers, and documents; and the court may issue an order requiring that person to appear before the Advisory Commission, there to produce records, if so ordered, or to give testimony. A failure to obey such an order of the court may be punished by the court as a contempt thereof. All process in any such case may be served in the judicial district whereof the person is an inhabitant or may be found.

[(2) Each department, agency, and instrumentality of the executive branch of the Government, including independent agencies, shall furnish to the Advisory Commission, upon request made by the chairman, such information as the Advisory Commission deems necessary to carry out its functions.

[(3) Upon request of the chairman, the Department of Justice, the Department of Transportation, the Federal Maritime Commission, and the Federal Trade Commission shall detail staff personnel as necessary to assist the Advisory Commission.

[(4) The chairman may rent office space for the Advisory Commission, may utilize the services and facilities of other Federal agencies with or without reimbursement, may accept voluntary services notwithstanding section 1342 of title 31, United States Code [31 U.S.C. 1342], may accept, hold, and administer gifts from other Federal agencies, and may enter into contracts with any public or private person or entity for reports, research, or surveys in furtherance of the work of the Advisory Commission.

[(h) FINAL REPORT.—The Advisory Commission shall, within 1 year after all of its members have been duly appointed, submit to the President and to the Congress a final report containing a statement of the findings and conclusions of the Advisory Commission resulting from the study undertaken under subsection (f), including recommendations for such administrative, judicial, and legislative action as it deems advisable. Each recommendation made by the Advisory Commission to the President and to the Congress must have the majority vote of the Advisory Commission present and voting.

[(i) EXPIRATION OF THE COMMISSION.—The Advisory Commission shall cease to exist 30 days after the submission of its final report.

[(j) AUTHORIZATION OF APPROPRIATION.—There is authorized to be appropriated \$500,000 to carry out the activities of the Advisory Commission.]

Section 19, Shipping Act of 1984

[46 U.S.C. App. 1718]

§ 1718. Ocean [freight forwarders] *transportation intermediaries*

[(a) LICENSE.—No person may act as an ocean freight forwarder unless that person holds a license issued by the Commission. The Commission shall issue a forwarder's license to any person that—

[(1) the Commission determines to be qualified by experience and character to render forwarding services; and

[(2) furnishes a bond in a form and amount determined by the Commission to insure financial responsibility that is issued by a surety company found acceptable by the Secretary of the Treasury.]

(a) *LICENSE.—No person in the United States may act as an ocean transportation intermediary unless that person holds a license issued by the [Commission] Board. The [Commission] Board shall issue an intermediary's license to any person that the [Commission] Board determines to be qualified by experience and character to act as an ocean transportation intermediary.*

(b) *FINANCIAL RESPONSIBILITY.—*

(1) *No person may act as an ocean transportation intermediary unless that person furnishes a bond, proof of insurance, or other surety in a form and amount determined by the [Commission] Board to insure financial responsibility that is issued by a surety company found acceptable by the Secretary of the Treasury.*

(2) *A bond, insurance, or other surety obtained pursuant to this section—*

(A) *shall be available to pay any judgment for damages against an ocean transportation intermediary arising from its transportation-related activities described in section 3(17) of this Act, or any order for reparation issued pursuant to section 11 or 14 of this Act, or any penalty assessed pursuant to section 13 of this Act; and*

(B) *may be available to pay any claim against an ocean transportation intermediary arising from its transportation-related activities described in section 3(17) of this Act with the consent of the insured ocean transportation intermediary, or when the claim is deemed valid by the surety company after the ocean transportation intermediary has failed to respond to adequate notice to address the validity of the claim.*

(3) *An ocean transportation intermediary not domiciled in the United States shall designate a resident agent in the United States for receipt of service of judicial and administrative process, including subpoenas.*

[(b)] (c) *SUSPENSION OR REVOCATION.—The [Commission] Board shall, after notice and hearing, suspend of [or] revoke a license if it finds that the ocean [freight forwarder] transportation intermediary is not qualified to render [forwarding] intermediary services or that it willfully failed to comply with a provision of this*

Act or with a lawful order, rule, or regulation of the **Commission Board**. The **Commission Board** may also revoke an intermediary's license for failure to maintain **a bond in accordance with subsection (a)(2).** *a bond, proof of insurance, or other surety in accordance with subsection (b) (1).*

[(c)] (d) EXCEPTION.—A person whose primary business is the sale of merchandise may forward shipments of the merchandise for its own account without a license.

[(d)] (e) COMPENSATION OF [FORWARDERS] INTERMEDIARIES BY CARRIERS.—

(1) A common carrier may compensate an ocean **[freight forwarder]** *transportation intermediary, as defined in section 3(17)(A) of this Act*, in connection with a shipment dispatched on behalf of others only when the ocean **[freight forwarder]** *transportation intermediary* has certified in writing that it holds a valid **[license]** license, if required by subsection (a), and has performed the following services:

(A) Engaged, booked, secured, reserved, or contracted directly with the carrier or its agent for space aboard a vessel or confirmed the availability of that space.

(B) Prepared and processed the ocean bill of lading, dock receipt, or other similar document with respect to the shipment.

(2) No common carrier may pay compensation for services described in paragraph (1) more than once on the same shipment.

[(3)] No compensation may be paid to an ocean freight forwarder except in accordance with the tariff requirements of this Act.]

[(4)] (3) No ocean **[freight forwarder]** *transportation intermediary* may receive compensation from a common carrier with respect to a shipment in which the **[forwarder]** *intermediary* has a direct or indirect beneficial interest nor shall a common carrier knowingly pay compensation on that shipment.

(4) *No conference or group of 2 or more ocean common carriers in the foreign commerce of the United States that is authorized to agree upon the level of compensation paid to an ocean transportation intermediary, as defined in section 3(17)(A) of this Act, may—*

(A) *deny to any member of the conference or group the right, upon notice of not more than 5 calendar days, to take independent action on any level of compensation paid to an ocean transportation intermediary, as so defined; or*

(B) *agree to limit the payment of compensation to an ocean transportation intermediary, as so defined, to less than 1.25 percent of the aggregate of all rates and charges which are applicable under a tariff and which are assessed against the cargo on which the intermediary services are provided.*

Section 20, Shipping Act of 1984

[46 U.S.C. App. 1719]

§ 1719. Contracts, agreements, and licenses under prior shipping legislation

(a)—(c) [Omitted]

[(d) EFFECTS ON CERTAIN AGREEMENTS AND CONTRACTS.—All agreements, contracts, modifications, and exemptions previously approved or licenses previously issued by the [Commission] Board shall continue in force and effect as if approved or issued under this Act; and all new agreements, contracts, and modifications to existing, pending, or new contracts or agreements shall be considered under this Act.]

(d) *EFFECTS ON CERTAIN AGREEMENTS AND CONTRACTS.—All agreements, contracts, modifications, and exemptions previously issued, approved, or effective under the Shipping Act, 1916, or the Shipping Act of 1984 shall continue in force and effect as if issued or effective under this Act, as amended by the Ocean Shipping Reform Act of 1997, and all new agreements, contracts, and modifications to existing, pending, or new contracts or agreements shall be considered under this Act, as amended by the Ocean Shipping Reform Act of 1997.*

(e) SAVINGS PROVISIONS.—

(1) Each service contract entered into by a shipper and an ocean common carrier or conference before the date of enactment of this Act [enacted Mar. 20, 1984] may remain in full force and effect and need not comply with the requirements of section 8(c) of this Act [46 U.S.C. App. 1707(c)] until 15 months after the date of enactment of this Act [enacted Mar. 20, 1984].

(2) This Act and the amendments made by it shall not affect any suit—

(A) filed before the date of enactment of this Act [enacted Mar. 20, 1984], or

(B) with respect to claims arising out of conduct engaged in before the date of enactment of this Act [enacted Mar. 20, 1984] filed within 1 year after the date of enactment of this Act [enacted Mar. 20, 1984].

(3) *The Ocean Shipping Reform Act of 1997 shall not affect any suit—*

(A) filed before the effective date of that Act; or

(B) with respect to claims arising out of conduct engaged in before the effective date of that Act filed within 1 year after the effective date of that Act.

(4) *Regulations issued by the Federal Maritime Commission shall remain in force and effect where not inconsistent with this Act, as amended by the Ocean Shipping Reform Act of 1997.*

Section 23, Shipping Act of 1984

[46 U.S.C. App. 1721]

§ 1721. Surety for non-vessel-operating common carriers [Section 23, Shipping Act of 1984]

[(a) SURETY.—Each non-vessel-operating common carrier shall furnish to the Commission a bond, proof of insurance, or such other surety, as the Commission may require, in a form and an amount determined by the Commission to be satisfactory to insure the financial responsibility of that carrier. Any bond submitted pursuant to this section shall be issued by a surety company found acceptable by the Secretary of the Treasury.

[(b) CLAIMS AGAINST SURETY.—A bond, insurance, or other surety obtained pursuant to this section shall be available to pay any judgment for damages against a non-vessel-operating common carrier arising from its transportation-related activities under this Act or order for reparations issued pursuant to section 11 of this Act [46 U.S.C. App. 1710] or any penalty assessed against a non-vessel-operating carrier pursuant to section 13 of this Act [46 U.S.C. App. 1712].

[(c) RESIDENT AGENT.—A non-vessel-operating common carrier not domiciled in the United States shall designate a resident agent in the United States for receipt of service of judicial and administrative process, including subpoenas.

[(d) TARIFFS.—The Commission may suspend or cancel any or all tariffs of a non-vessel-operating common carrier for failure to maintain the bond, insurance, or other surety required by subsection (a) of this section or to designate an agent as required by subsection (c) of this section or for a violation of section 10(a) (1) of this Act [46 U.S.C. App. 1709(a) (1)].]

TITLE 49. TRANSPORTATION

SUBTITLE I. DEPARTMENT OF TRANSPORTATION

CHAPTER 7. [SURFACE] INTERMODAL TRANSPORTATION BOARD

SUBCHAPTER I. ESTABLISHMENT

§ 701. Establishment of Board

(a) ESTABLISHMENT.—There is hereby established within the Department of Transportation the [Surface] *Intermodal* Transportation Board.

(b) MEMBERSHIP.—

(1) The Board shall consist of [3 members,] *5 members*, to be appointed by the President, by and with the advice and consent of the Senate. Not more than [2 members] *3 members* may be appointed from the same political party.

[(2) At any given time, at least 2 members of the Board shall be individuals with professional standing and demonstrated knowledge in the fields of transportation or transportation reg-

ulation, and at least one member shall be an individual with professional or business experience (including agriculture) in the private sector.】

(2) At any given time, at least 3 members of the Board shall be individuals with professional standing and demonstrated knowledge in the fields of surface or maritime transportation or their regulation, and at least 2 members shall be individuals with professional or business experience (including agriculture, surface or maritime transportation, or marine terminal or port operation) in the private sector. At any given time, at least 2 members of the Board shall be individuals with professional standing and demonstrated knowledge in maritime transportation or its regulation or professional or business experience in maritime transportation or marine terminal or port operation in the private sector, and at least 2 members of the Board shall be individuals with professional standing and demonstrated knowledge in surface transportation or its regulation or professional or business experience in agriculture or surface transportation in the private sector. Neither of the 2 individuals appointed as surface transportation members under the preceding sentence, and neither of the 2 individuals appointed as maritime transportation members under that sentence, may be members of the same political party.

(3) The term of each member of the Board shall be 5 years and shall begin when the term of the predecessor of that member ends. An individual appointed to fill a vacancy occurring before the expiration of the term for which the predecessor of that individual was appointed, shall be appointed for the remainder of that term. When the term of office of a member ends, the member may continue to serve until a successor is appointed and qualified, but for a period not to exceed one year. The President may remove a member for inefficiency, neglect of duty, or malfeasance in office.

(4) On January 1, 1996, the members of the Interstate Commerce Commission serving unexpired terms on December 29, 1995, shall become members of the Board, to serve for a period of time equal to the remainder of the term for which they were originally appointed to the Interstate Commerce Commission. Any member of the Interstate Commerce Commission whose term expires on December 31, 1995, shall become a member of the Board, subject to paragraph (3).

(5) No individual may serve as a member of the Board for more than 2 terms. In the case of an individual who becomes a member of the Board pursuant to paragraph (4), or an individual appointed to fill a vacancy occurring before the expiration of the term for which the predecessor of that individual was appointed, such individual may not be appointed for more than one additional term.

(6) A member of the Board may not have a pecuniary interest in, hold an official relation to, or own stock in or bonds of, a carrier providing transportation by any mode and may not engage in another business, vocation, or employment.

(7) A vacancy in the membership of the Board does not impair the right of the remaining members to exercise all of the

powers of the Board. The Board may designate a member to act as Chairman during any period in which there is no Chairman designated by the President.

(c) CHAIRMAN.—

(1) There shall be at the head of the Board a Chairman, who shall be designated by the President from among the members of the Board. The Chairman shall receive compensation at the rate prescribed for level III of the Executive Schedule under section 5314 of title 5.

(2) Subject to the general policies, decisions, findings, and determinations of the Board, the Chairman shall be responsible for administering the Board. The Chairman may delegate the powers granted under this paragraph to an officer, employee, or office of the Board. The Chairman shall—

(A) appoint and supervise, other than regular and full-time employees in the immediate offices of another member, the officers and employees of the Board, including attorneys to provide legal aid and service to the Board and its members, and to represent the Board in any case in court;

(B) appoint the heads of offices with the approval of the Board;

(C) distribute Board business among officers and employees and offices of the Board;

(D) prepare requests for appropriations for the Board and submit those requests to the President and Congress with the prior approval of the Board; and

(E) supervise the expenditure of funds allocated by the Board for major programs and purposes.